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CALIFORNIA CONSERVATORSHIPS: AN EXAMINATION INTO ETHICS,
STANDARDS, AND JUDICAL MONITORING

A Project
Presented to the
Faculty of
California State University,
San Bernardino

In Partial Fulfillment
of the Requirements for the Degree
Master of Public Administration

by
Lucille Castillo Lyon
June 1994


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Approved by:


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Abstract

As the American population is aging, the need for surrogate decision-makers increases. Conservators are court appointed surrogate decision-makers who oversee the care and financial management of incapacitated persons.

This research project has three objectives. First, to examine certain conservatorship standards and practices relating to training, philosophy, ethics and areas where there are inherent conflicts of interest. Second, to identify key standards and evaluate a public and private conservator to those standards. Third, to determine if judicial monitoring was effective in monitoring a conservator's performance.

The research methods used in this research project were a state-wide questionnaire completed by California public guardians and an in-depth evaluation of one public and private conservatorship agency.

The first finding is that most conservators either public or private are not trained in ethical conduct. Further, there is no formalized training or guidelines to ensure that conservators are competent to carry out their duties. Second, the Federal Model Standards clearly identify the actual practices of conservators. The most prominent weakness exist in internal/external quality control mechanisms. Third, judicial monitoring is not perceived as being effective in monitoring the performance of conservators.

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CHAPTER I

Introduction

At no time in our history are Americans living longer. Medical advances and healthier life styles have given many Americans longer lifetimes. Longevity is accompanied by myriad new problems never before addressed in our political, administrative and economic environments. Self-determination, autonomy, and freedom of choice denote concepts which are the foundation of our nation's political philosophy. The most pressing challenge deals with preserving autonomy despite the decline of a person's mental and physical capacity.

As older adults lose the ability to make decisions, surrogate decision-making becomes one of the most controversial issues facing modern times since the incapacitated individual must rely upon the ethical actions of the decision-maker to make those important day-by-day decisions. Surrogate decision-making falls into two major areas: medical decisions and financial management of the estate. Informed medical consent can range from consenting to surgical procedures, medications, hand and arm restraints, use of respirators, feeding tubes, to withdrawal of life support.

The rise of personal wealth and the variety of government entitlements create a need for surrogate financial management. Guardians are used as the surrogate decision-makers on behalf

of incapacitated individuals. Guardians petition for their authority under probate laws and are monitored by the judicial system.

Some guardians have used their fiduciary relationship to abuse their wards. The abuse can range from establishing a guardianship inappropriately, not properly caring for the ward, overcharging wards for services to absconding with assets.

California guardianships are monitored by the judicial system. When a guardian dies or is removed, the court will typically appoint a government official to oversee the care of the incapacitated person. Thus, California government has a role in providing this service. Less government in California has been the cry of the general public for the last fifteen years and now a crisis exists where government finds itself setting priorities as to what services it should provide. It has often been said that the measure of civilization is how well it takes care of the old and sick. Public guardian agencies have been in existence for several decades providing surrogate decision - making services. With the demographics of the aging in California and rise of a new profession, private professional conservators, the role of the public administrator is quite unique. The public administrator has an opportunity to set conservatorship standards, point out the effectiveness of the current system of judicial monitoring and advocate for continued public service funding for the most

severely disabled individual. There have been several studies which examine the guardianship appointment process and court supervision; however, no study has been done applying model standards for conservators and evaluating the performance of public and private conservators against such standards.

The first goal of this research project is to examine specific conservatorship standards and practices relating to training, philosophy and areas where inherent conflict of interest issues arise. Questions in these areas were posed to Public Guardians who attended a state-wide conference during March 1992.

The second goal is to identify certain ideal standards in relationship to conservatorship practice and evaluate the conservator to those standards.

Finally, the third goal is to determine if judicial monitoring was effective in monitoring a conservator's performance. If problems were detected what affirmative actions were undertaken by the Court.

The research methods used in this study included the administration of a standardized questionnaire to 57 public guardians throughout California to determine the practices of guardians/conservators. The questionnaire focused on their beliefs and current practices in providing conservatorship services. It should be remembered that here are public guardians/conservators who may be more likely to adhere to ethical practices than private practitioners. After the

questionnaire was administered certain practices were highlighted and a second questionnaire was developed which was used to compare case files between public and private conservators. A sample of one Public Guardian and one private conservator case files were analyzed to measure the adherence to those standards.

The implications for public policy covers areas such as identifying problems related to guardianship laws, examining the need to regulate conservators to enhancing judicial monitoring.

CHAPTER II

Older Adult Issues in the 1990's

"The twentieth century began with an average U.S. life expectancy of 47 years. The U.S. population over 80 years old in 1980 was determined to be 2.9 million and estimated to grow to 7.9 million by 2020."¹ Americans can expect to live longer because of changes in life style, medical care and nutrition. A statistical profile of the elderly shows three trends. "First, the absolute number of elderly individuals is increasing. Second, the percentage of the total population that is elderly is increasing. Third, the ratio of workers, (those age twenty to sixty-four compared with those age sixty-five or older,) has steadily fallen for the past fifty years and will continue to fall for the foreseeable future."²

The significance of the demographic trends amply illustrates that the basic problem will be caring for the elderly when there are fewer younger adults to support older adults. The diminishing birth rate compounded with certain terminal diseases alter ratio among the age groups. What this

¹ Marquart Policy Analysis Associates, Conservatorships of the Elderly Recommendations for Its Interface with Programs and Services for Older Californians (September 1988):1

² Lawrence A. Frolik and Allison P. Barnes, "An Aging Population: A Challenge to the Law", The Hastings Law Journal Vol 42 (March 1991):688

means is some adults will outlive their siblings and children placing a demand for services on either the extended family, if it exists at all, or on government social services.

The elderly population usually experience a decline in their physical and mental capabilities. The generalization which can be made is that because of the aging process most individuals can expect to experience a decline in physical vigor, vision impairments, and hearing. " Mild memory loss is commonplace among those in their seventies and eighties. The loss is one of retrieval; the memory is fine and new facts can be learned, but their recall may prove problematic." ³ Finally the elderly tend to suffer from chronic medical conditions. The combination and inter-relationship of these factors make the older person frail.

How does this relate to public policy issues? The implications are that the members of "old" (age 85 and older) are steadily increasing and this population is living beyond their capacity to provide completely for their own personal care and to manage their property. ⁴ "Long term needs,

³. Lawrence A. Frolik and Alison P. Barnes, " An Aging Population: A Challenge to the Law: The Hastings Law Journal Vol 42 (March 1991) : 695.

⁴. U.S. Senate, Special Committee on Aging, Aging America - Trends and Projections; 1987-1988, p.5. Recent statistics compiled by the Social Security Administration at the request of the Subcommittee on Housing Administration and Consumer Interests of the House Select Committee on Aging indicate an increase in the use of representative payee arrangements. Data reveal that the percentage of beneficiaries for whom a representative payee is appointed has increased

including the need for surrogate assistance, will likely be met increasingly by government and private agencies."⁵

De-Institutionalization of the Mentally Ill

Another factor complicating financial and estate management is the impact of de-institutionalizing persons from state mental health facilities. Mentally ill persons or developmentally disabled individuals were typically cared for and treated in state hospitals. In 1955, the nationwide number of patients in state hospitals reached its peak of 560,000 patients.⁶ Twenty years later, the number of patients declined to 140,000--a 75% reduction. This movement occurred as a result of community mental health philosophy that promoted care at home in the least restrictive environment.

substantially in the last decade. From 1973 to 1981, 2.82% to 2.94% of the total Title II (OASDI) adult beneficiary population had representative payees. After 1982 the percentage increased yearly until 1985 -- the last year statistics are available---when 3.26% of adult beneficiaries population had representative payee services. A similar increase is seen among the Title XVI (SSI) adult beneficiaries. From 1975 to 1983 the percentage with representative payees increased from 9.17% to 19.49%. (Data does not indicate whether the increase occurred among older persons.)...In 1985, more than half of the adult women who received Title II benefits and had representative payee were over the age of 65. More than a quarter were over 80."

⁵. U.S. House of Representatives, Select Committee on Aging, Model Standards to Ensure Quality Guardianship and Representative Payee Services. 100th Cong., 1st sess...October 1989., 5.

⁶. *ibid.*, 6

The development of new psychotropic drugs also fueled de-institutionalization. Unfortunately the resources for community care never materialized, resulting in many mentally ill patients becoming victims of self neglect. Some states, such as California, used a variation of the conservatorship tool to provide surrogate decision making on behalf of the mentally disabled individual. This led to another class of persons who began using guardianship and protective services.

The California Model found in the Lanterman-Petris-Short Act enacted in 1968 was designed to protect the civil rights of mentally ill individuals by establishing procedural due process protection to ensure that individuals were not deprived of their liberty. Surrogate decision-making was built into this act requiring a person to consent to mental health treatment and placement on behalf of the gravely disabled person. In order to involuntarily hospitalize a mentally disabled individual a person must be determined by the court to be gravely disabled. "Gravely disabled means that as a result of a mental disorder, a person is unable to provide for his/her own food, clothing and shelter."¹ If the Court determines an individual meets this criterion, a surrogate decision-maker is appointed to decide such issues as consenting to psychotropic medication and placement. The incapacitated individual loses certain rights such as refusing

¹. California Welfare and Institution Code Section 5008(h).

treatment and liberty.

When the act was first passed many California counties had existing Public Administrator and/or Public Guardian Offices which managed the estates of elderly persons and estates of deceased individuals. It was easier to use the existing structure of the public guardian's to provide the conservatorship services in each county rather than establishing new offices. The State Department of Mental Health provided Short-Doyle funding directly to the local mental health departments who in turn contracted with the public guardians to provide services. (Not all counties contracted with the public guardian; there are some mental health departments which assumed this responsibility such as in San Diego where the Superior Court counselor conducts the investigation and the Mental Health Department assumes the personal responsibility of the mentally disabled person.)

Elder Abuse

The demographic change in the population as well as the development of guardianships for mentally ill person is linked to another trend - elder abuse reporting laws.

"Forty-one states have laws requiring professionals, and the public, to report all incidence of suspected abuse, neglect and self neglect to a public agency. Reporting laws are bringing any increasing number of older

individuals to the attention of public agencies."⁸

If the older adult resists assistance, and continues to remain in an abusive or neglectful situation, a petition for conservatorship or guardianship can be filed to have the person declared legally incompetent and a guardian appointed to protect the older adult even if it is against the older adult's wishes.

The elderly become victims of financial exploitation particularly from sophisticated con artists who prey upon residents of retirement communities or the elderly in their own homes. The Southern California areas of Los Angeles and Orange Counties recently reported that elders are vulnerable to scams because they are more likely to be estranged from family and friends, suffering gradual losses of memory, and accept deals that offer to preserve their buying power.

" Orange County's Adult Protective Services, said the division has handled 269 reports of elder abuse in the Leisure World areas since 1986 about 25 % of which involved fraud and other fiduciary abuse....The Los Angeles Police Department formed an Elderly Persons Estate Unit last year after encountering at least 50 cases a year in which seniors with diminished

⁸. U.S. House of Representatives, Select Committee on Aging, Model Standards to Ensure Quality Guardianship and Representative Payee Services. 100th Cong., 1st sess., October 1989., 7.

capacity were swindled by befriending strangers." ⁹

Caretakers of the elderly can easily become abusers because of the relationship between the patient and the care giver. The actions can occur quite rapidly. Mrs. Nancy Solman of Pasadena, California, recently recounted the story of her 85 year old aunt, Mrs. Florence Batty:

"After Mrs. Batty was released from a hospital in December, 1989, Solman arranged for a care-giver from a local nurses' registry to provide 24 hour care, and then took off on a trip to Mexico. When she returned two weeks later, Solman discovered that the care-giver had sold Batty's condominium, had a new will drawn up with herself as the sole beneficiary, and had bought two one-way tickets to Tennessee for Batty and herself. She found all that out only after her aunt's attorney called to say that the care-giver was trying to get power of attorney for Batty's estate. Solman was able to stop escrow and the sheriff's investigators asked the woman to leave the area...Such cases are almost never prosecuted. In Batty's case, authorities said she would not have been a reliable witness because of her fading memory."¹⁰

In situations where an older person is incapacitated, it is quite easy for the older adult to sign a general power of attorney only to discover that the attorney-in-fact is fraudulently selling real property. The older adult, who is aware of the fraudulent transactions can revoke the power of attorney, but in most cases, when the older adult does not understand the financial abuse taking place, a conservator can take steps to stop this abuse. The court-appointed

⁹. Davan Maharaj, "Retirees Often Fall Prey When Con Artists Call", L.A. Times, 3 November 1991, A22.

¹⁰. Davan Maharaj, "Retirees Often Fall Prey When Con Artists Call" L.A. Times 3 November 1991, A24.

conservator can stop the transactions and initiate legal action to recover the assets.

Surrogate Decision-Maker

Another important trend is the reliance many hospitals and long term agencies place upon surrogate decision-makers to make life threatening decisions for incapacitated persons. The problem occurs when an individual experiences a severe medical crisis such as a stroke which incapacitates him for an extended period of time. Medicare and Medicaid coverage provide limited acute hospitalization forcing the hospital to prematurely discharge patients into skilled nursing facilities. When family members are unavailable, the hospital will turn to conservators to provide the necessary consents for admission and financial management to pay for the expense of long term care.

Fiduciary Abuse

The demand for surrogate decision-makers led to a proliferation of service programs solely for the purpose of providing guardianship and/or representative payee services. Once the guardianship or conservatorship is established, the question becomes one of evaluating the performance of the

public and private organizations providing the services. As early as 1987, many older adults testified before a House panel describing their terror and humiliation as wards of the guardianship system. A Los Angeles times article recounted some testimony made by many elderly persons at the United House Panel hearings.

"What began as a plan to protect myself and my affairs while I recovered from my stroke ended up a nightmare" said Minnie Manoff, 81, of Greeley, Kansas. " All you have to do is to have a stroke or be in a coma and they can take away all your rights, " added Marguerite Van Betten, 66 of Plantation, Florida. The two women and others told tales of forcible removal from their homes, forced admission to nursing homes, theft committed by their guardians and loss of basic rights such as getting mail, telephone calls and money from the bank."¹¹

Other blatant examples are found in testimony on the Subcommittee on Health and Long-Term Care of the House Select on Aging. In fact the private sector is not the only place abuse can be found. The public sector also had some examples where the conservator failed to protect the interests of his/her ward.

"One example is of a former Bay County Michigan Public Guardian who embezzled \$129,506 from 75 of his wards during his eight years as guardian. As a 23 year old janitor in a local tavern, he answered a newspaper ad and was hired for the public guardian position--knowing nothing about accounting, having no legal or social worker training, and not even knowing what a public guardian was. By the time of his arrest in 1984, he had at least 210 wards and was overseeing \$1.5 million in income and assets...A California County Public Guardian's office was blamed for the 1985 starvation death of a 79 year old man. The office hadn't seen the ward in two

¹¹. Associated Press, "Elderly Tell Panel of Abuses, Terror in Guardianship System", L.A. Times, 26 September 1987.

years."¹²

The problem of abuse or neglect from guardians and conservators - the very persons ordered to "protect" the frail elderly or mentally ill person is a major social problem. The conservator can be a public agency, private professional conservator, family member, attorney or accountant.

In 1989 the second largest private non-profit conservatorship organization in Los Angeles County was audited by the State Auditor Controller after a complaint was filed against the organization, Planned Protective Services.

"A charitable trust auditor, Harold G. Statz, alleged in a sworn declaration that an audit covering the years 1986-1988 had shown that Planned Protective Services had engaged in a variety of wrongful acts...The allegations included: Kickbacks: PPS has received substantial donations from banks and real estate agents that do business with PPS," Statz said. "The largest donations, totaling \$223,809...came from Western Bank, where PPS keeps a large amount of client funds in non-interest bearing checking accounts...Murky accounting and records: Planned Protective Services' accounting records do not provide any audit trail breaking out how conservatorship funds are used nor do the firm's records give a true statement of its financial condition."¹³

Responding to the State Auditor's allegations, a Superior Court judge placed all the cases under the jurisdiction of the Los Angeles County Public Guardian.

More recent cases disclose situations where a California

¹². U.S. House of Representatives, Select Committee on Aging, Model Standards to Ensure Quality Guardianship and Representative Payee Services, 100th Cong., 1st sess., October 1989., 1.

¹³. Donald L. Soble, "Audit of Conservator Alleges Kickbacks, Financial Abuses", L.A. Times, 6 June 1989., II 1.

attorney in his capacity as the conservator influenced his conservatee to change estate plans whereby directly benefiting from the estate.

" In another case, Gunderson persuaded a judge to name him guardian of a Canadian woman who was suffering from senile dementia and was incapable of managing her assets. Once in control of her affairs, Gunderson drafted a new will that gave him the lion's share of her estate - about \$225,000 worth of American Telephone & Telegraph Co. stock.

One of the woman's heirs, who lives in Canada, accused Gunderson in court of defrauding the rightful beneficiaries with a will that the woman - who is now dead - was obliged to sign against her wishes. The heir reluctantly abandoned her court challenge when Gunderson offered her \$60,000 to drop the case. The heir's Canadian attorney, Donald Fjeldsted, said the anticipated cost of waging a court fight in far-off California was the only reason his client settled. "You have to realize the difficulty and cost of traveling to California," he said."¹⁴

Unfortunately conservators are not licensed under any government agency. In California, the State Legislature enacted new laws requiring the registration of conservators in 1990. Under Probate Code Section 1823 all private conservators must register certain information with the County Court Clerk. This information remains confidential and is only available to the Superior Court Investigator, Examiner and Judge. The Superior Court is ultimately responsible for the supervision of all conservators, however, the court may lack the resources to provide comprehensive supervision over any conservator.

¹⁴. Davan Maharaj, "Lawyer Inherited Millions in Stock, Cash from Clients", L.A. Times, 22 November 1992, A1.

Summary

The aging United States population raises new issues which have never been addressed on a large scale. People are living longer taxing health care and social service resources. When people outlive families or have no family, the need for services such as medical surrogate decision-makers for end life decisions, social services to avoid self-neglect, and financial management to pay for care, becomes even more important. This population taken in concert with a growing population of mentally ill and developmental disabled persons who experience health or mental health problems creates a need for competent individuals to assume this role. But, there are recent examples where conservators abuse their authority and further exploit vulnerable individuals. What are the problems facing conservators and does our current system effectively protect the most frail ?

CHAPTER III

Early Historical Development of Guardianship

Recent studies on guardianship indicate this concept was first established during Roman times.

"Guardianship was a concept codified in Roman law at the time of Cicero. Both Plutarch and Cicero wrote about guardianship proceedings, describing, the desire to acquire or protect property as being rooted in legal tradition."¹⁵

The emphasis on guardianship began over the concern over property rather than the care of the incapacitated individual. This philosophy existed from Roman times to the early American colonial period.

"In England and colonial America, the doctrine of *parens patriae*--the responsibility of benevolent society to care for those unable to care for themselves--was the legal and philosophical basis for guardianship."¹⁶

Traditionally this concept is rooted in the care of children, orphans and incompetents. As time progressed, guardians became responsible for the personal affairs of their mentally disabled wards.

"During medieval England a jury of twelve men determined

¹⁵ 15. Marquart Policy Analysis Associates, Conservatorship's of the Elderly; Recommendations for Its Interface with Programs and Services for Older Californians, September 1988, .8.

¹⁶ 16. Barbara A. Venesy, "1990 Guardianship Law Safeguards Personal Rights Yet's Protects Vulnerable Elderly", Akron Law Review, Vol. 24 No.1 (Summer 1990):163

competency or mental disability. Under the benevolent paternalism of parens patriae, people believed there were no opposing side because only the best interests of the incompetent were at issue."¹⁷

Development of Guardianship in America

Traditionally the concepts protecting the estate of a person began in the administration of a decedent's property.

"In the U.S., the concept of guardianship is rooted in laws touching on decedents' estates. Freezing assets of the deceased was necessary at times to protect the claims of creditors against the estate from dissipation by relatives."¹⁸

The thirteen original colonies adopted substantially the entire common law of England of which there was a scheme of equity jurisprudence which was the foundation of the system of trusts.

"Towards the end of the eighteenth century, when trusts came into more common use in America, the English system had been well developed and was naturally adopted in substantial entirety by the American colonial and state chancellors."¹⁹

Later several states developed their own codes such as New York followed by Michigan, Wisconsin and Minnesota.

¹⁷. Barbara A. Venesy, "1990 Guardianship Law Safeguards Personal Rights Yet's Protects Vulnerable Elderly", Akron Law Review, Vol 24. No.1 (Summer 1990):164.

¹⁸. Marquart Policy Analysis Associates, Conservatorship's of the Elderly: Recommendations for Its Interface with Programs and Services for Older Californians, (September 1988) 9.

¹⁹. George Cleason Bogert, Handbook of the Law of Trusts, 5th ed. (St. Paul, Minn.: West Publishing Co. 1973), 14.

There have been federal attempts beginning in 1935 to codify parts of trust law, such as the Uniform Fiduciaries Act, the Uniform Trusts Act and the Uniform Probate Code to name a few, however, this was never achieved.

Guardianship resembles trusteeship to the extent that it is a fiduciary relationship involving the management of property for another. "Guardians (sometimes called committees, conservators, or curators) of the property of infants, spendthrifts, persons of unsound mind and other incompetents, resemble trustees by virtue of their fiduciary relationship to their wards. Both guardians and trustees control and manage property for others, toward whom the most scrupulous unselfishness, honesty and good faith must be observed....A guardian is sometimes said to be trustee. It would be more accurate to state that he is a court - appointed representative for a person of subnormal capacity who is given powers of management and disposition over the property of his ward."²⁰

Development of Guardianship in California

In the late 1950's California had one type of guardianship which covered two functions: guardianship of the person and guardianship of the estate. Guardianship referred

²⁰. George Cleason Bogert, Handbook of the Law of Trusts, 5th ed. (St. Paul, Minn.: West Publishing Co. 1973), 37.

to a fiduciary relationship between an incapacitated individual (adult) or minor child and a legal representative.

The California Legislature passed the Lanterman-Petris-Short Act in 1967 which created a new classification of guardianship. Under this Act, the method and duration of mentally ill persons committed to state hospitals changed dramatically. Under old civil commitment laws, a person was committed for an undetermined amount of time upon the recommendation of a panel of doctors. It was not uncommon to have mentally ill persons committed for 20 years or more without any court review. The new law provided procedural safeguards over the mentally ill individual or person suffering from alcoholism. The most significant change was the establishment of a legal criterion wherein persons could be involuntarily committed for mental health treatment. Along with the new criterion, the proposed conservatee was entitled to be present in a court proceeding, had the right to counsel, a right to a jury trial and a medical review yearly. This type of guardianship was codified in the California Welfare and Institutions Code.

The more traditional guardianship provisions were codified in the California Probate Code. In 1979, the California law provided for a Superior Court investigator to advise proposed conservatees of the petition for conservatorship, its effects and legal findings. The investigator is legally required to write a court report

indicating that the proposed conservatee was advised of his/her rights, the wishes of the conservatee, and recommendations regarding the appointment of an attorney. The court investigator is required to visit the conservatee one year after the conservatorship is established and biannually thereafter until the guardianship terminates.

Many of the provisions enacted in 1979 and made effective the following year allowed a conservator additional latitude to manage the estate without seeking prior court authorization. However, legal provisions remained allowing the conservator to seek instructions if the guardian was in any doubt.

Another major change in the area of conservatorship's occurred in 1980. At this time the Probate Code was modified to provide for another type of conservatorship - a limited conservatorship for persons who are developmentally disabled. The limited conservatorship is a category within the provisions of general probate conservatorships. A distinction was made between guardians and conservators in California probate codes. Guardianship can only be established for persons under the age of eighteen (also referred to as wards). Conservatorship defines persons over the age of eighteen or minors who are married. In some other states, guardianship can apply to a personal guardianship appointment; conservatorship applies to estate management. In order to avoid any confusion, the term conservatorship will be

used to define the fiduciary relationship between an incapacitated adult and the legal representative. The incapacitated adult will be referred to as the conservatee and the legal court-appointed representative will be referred to as the conservator.

By 1988, California had three types of conservatorships: (1) general probate conservatorship, (2) limited conservatorship, (3) mental health (LPS) conservatorship. Each conservatorship has different appointment criteria, specifies the authority and powers granted to the conservator, and the civil rights retained by the conservatee. Each category provides for a conservatorship of a person and/or estate. However, under a mental health conservatorship, there is no provision for a conservatorship of the estate if there is no conservatorship of the person. It is permissible to have a mental health conservatorship over the person only but not over the estate.

By 1988, the California Revisions Commission began revising and re-numbering the California Probate Code. In 1990, the Probate Code was revised and significant changes were made to enhance civil rights protections for the conservatees. Some of these changes addressed the abuses reported by the Associated Press in 1987 as well as recommendations made by the Senate Office on Research.

The first significant change was the requirement of a supplemental information form which is to be filed

concurrently with the probate petition for conservatorship appointment. The confidential supplemental form adds provisions to discuss placement of the proposed conservatee and the viability of allowing the conservatee to remain in his/her own home. Alternatives to conservatorship must be considered by the conservator and if those alternatives are not viable the reasons must be given why the alternatives are not workable. The petitioner must disclose, if known, any health or social services provided to the proposed conservatee.

An equally significant change was the additional requirement of obtaining a medical declaration by a licensed physician regarding the proposed conservatee's ability to give informed medical consent. Prior to this provision, the conservator could simply make an allegation that the proposed conservatee lacked the capacity to give informed medical consent. Based upon this allegation the court routinely granted exclusive authority to consent to medical treatment to the conservator. Societal questions such as deciding when life ends and who makes that decision makes the role of the medical surrogate decision-maker more difficult. Under California law, the conservator has the authority over family members to decide on the withdrawal of life support or issuance of no life saving codes.

The Legislature also passed statutes requiring conservators to prepare written general plans indicating the

proposed care and housing for the conservatee. Conservators are also required to disclose their plans to manage estates. At the time the court accounting is filed, the conservator must prepare a status report indicating the conservator's personal evaluation of the conservatee's health, well-being and functional level.²¹

The proliferation of private case managers and private professional conservators is a new trend. A research project published in 1987 indicated "More than half of the respondents to the InterStudy survey have been providing private case management for three years or less. This not only suggests that private case management is a relatively new phenomenon, but that it has continued to grow considerably in the past few years as well."²²

In an effort to address the rise of private professional conservators, the Legislature passed new code provisions in 1990 and 1991. Since conservators are not licensed or regulated, legislation was passed to require registration of private professional conservators. Private professional conservators are required to file a statement, under penalty of perjury, information relating to their educational background, professional references, value of assets currently under their jurisdiction, address, and information as to

²¹. California Probate Code Sections 1835 and 2620.1.

²². Laura J. Secord, Private Case Management for Older Persons and their Families, (July 1987);47.

whether or not they have been removed for cause. The county clerk must order a background fingerprint check from the Department of Justice and the Federal Bureau of Investigation. The background investigation is to include all records of arrest resulting in conviction. The annual statement is considered confidential and can only be released to the court.²³ If this annual statement is not filed, the court is prohibited from appointing a private professional conservator.

Summary

The concepts of guardianship are found in historical records dating back to Roman times. English common law provided for a philosophy of parens patriae where society had a responsibility to care for those unable to care for themselves.

California laws regarding conservatorships and guardianships have been evolving steadily since the 1950's. The first type of conservatorship was a general conservatorship designed as a protective instrument. When laws were expanded to include civil rights protection for mentally ill and developmentally disabled individuals, more procedural safeguards were added to protect due process interests. The most notable changes included the right to

²³. California Probate Code Section 2342.

oppose the proceedings, representation by an attorney, and the right to a trial. In the early 1980's the pendulum swung to allow the conservator more discretion in the management of the conservatorship estate. Now in the era of the 1990's the pendulum is swinging to limit a conservator's discretion by requiring additional medical documentation to justify the existence of the conservatorship and judicial monitoring to ensure the conservatee's civil rights are protected. This change appears to be the direct result of unethical practices exercised by private case managers and conservators.

CHAPTER IV

Review of Literature

Effective judicial monitoring of conservatorships is the key to monitoring the ethical behavior and practices of guardians and conservators. There is very little literature available relating to monitoring the performance of guardians. The most notable documents are publications prepared by the American Bar Association, the National Judicial College and A National Model for Judicial Review of Guardian's Performance.

National Conference of the Judiciary on Guardianship Proceeding

In 1978 the American Bar Association established the Commission on Legal Problems of the Elderly. The commission was charged with examining the provision of legal services to the elderly, discrimination against the elderly, simplification of administration procedures and regulations, issues involving long term care, home equity conversion and Social Security process.

The National Judicial College was founded in 1963 and is the leading residential judicial education institution in the country. Its objective is to improve justice through national programs of education and training directed toward judge

proficiency, performance and productivity.

In June 1986, twenty-eight participants attended the National Judicial College in Reno, Nevada to discuss the special concerns of older alleged incompetents and wards for procedural due process, functional evaluation of medical/social evidence, decisions affording maximum autonomy, and sound periodic guardianship review.

"The recommendations made by the participants of the National Judicial College embraced four concepts. The first recommendation provided for ensuring due process protection for all alleged incapacitated individuals. This included personal notice to the incapacitated individual of the pending guardianship petition, presence at the hearing, and availability of legal representation.

The second recommendation examined the evidence applying legal standards to medical/social information. The consensus among the jurists was that the court had the ultimate responsibility to assess the medical evidence and determine incompetence. Advanced age by itself should not be a factor in determining incompetence. Investigative resources should be available to the court system to investigate the wards situation and condition. The use of independent resources would aid the court on issues of incompetence, placement, available services, and an assessment of less restrictive alternatives to conservatorship.

Maximizing the autonomy of the ward by the provision of a limited conservatorship was the third recommendation. A limited conservatorship, in this instance, would be a conservatorship order designed to cover disabilities suffered by the conservatee thereby providing the least restrictive intrusion upon the conservatee's rights.

Finally, the National Judicial College recommended adequate supervision over conservators to ensure effective conservatorship services. Effective supervision would cover submission and review of conservatorship reports, training of conservators covering orientation, ongoing technical assistance for conservators and the ability of the court to use conservatorship agencies which includes public, private or volunteer agency adhering to the same standards.

Conservatorship agencies would not be employees of the court thereby being independent from the court and other social service agencies.²⁴

The participants at the conference completed a survey on judicial practices for their specific jurisdiction. On questions relating to due process protection it appears that court hearings are held on 86% of the uncontested conservatorship hearings. Notice of the hearing was personally served on almost all the wards. However, the notice did not inform the ward that fundamental rights may be lost in 65% of the jurisdictions. At the hearing 52% of the wards were not advised orally by the court of losing certain rights. On questions relating specifically to attendance of the ward the question was raised as to how often the alleged incompetent person is present during the hearing. Twenty-two percent reported the ward made an appearance in court, 34% indicated sometimes and the largest percentage, 44%, reported the ward seldom attended the court hearing because they were physically unable to do so. Counsel was provided in the majority of cases.²⁵

This survey suggests that in the area of due process

24. The Commission of Legal Problems of the Elderly American Bar Association and National Judicial College, Statement of Recommended Judicial Practices, June 1986, 3-6.

25. The Commission of Legal Problems of the Elderly American Bar Association and National Judicial College, Statement of Recommended Judicial Practices, June 1986, 61.

protection the potential problems lie in not adequately informing the ward of the loss of fundamental rights through proper notice. However, the higher number of counsel appointed to represent the ward would suggest the attorney would have a duty to advise his/her client of the impact of the conservatorship. Attendance of the ward at the court hearing was another problem which can only be addressed by the court going to the patient or having an independent party conduct its own evaluation to determine if the non-appearance infringed upon due process protection.

The second part of the survey indicated the type of medical evidence submitted to the court justifying the guardianship. A doctor's letter concerning the alleged incompetent was usually submitted in eighty-nine percent (89%) of the cases. Whenever a doctor's letter was submitted to the court the question was asked if a medical diagnosis indicating frailty or disability dispositive on the case? (a) Forty-four respondents indicated that the doctors letter usually indicated evidence of frailty, fifteen per cent indicated sometimes the letter had a significant bearing upon the hearing and the remaining forty-one per cent said the letter seldom had a dispositive effect on the case. The next question asked whether the petitioner was required to state recent, concrete evidence of functional disabilities such as not paying bills, wandering the streets or inability to dress. The respondents all indicated this is required. The responses

to these questions suggest that the medical evidence along with statements provided by the petitioner would present a picture showing both medical evidence and functional ability which would prevent a conservator from inappropriately establishing a conservatorship.

The third area addressed in this study was the issue of establishing a limited conservatorship which would give the ward more independence. The question posed is whether state laws provide for the appointment of a limited, partial or single purpose conservator. Eighty-five per cent indicated there were provisions for limited conservatorship in their jurisdictions whereas fifteen percent replied no. When asked how often such appointments were made within the last 12 months, sixty-one jurists reported using limited appointments, however, the use of such limited appointment rarely occurred (less than 20%). The reasons given for such low use of limited conservatorships were the need for legislation, full appointment was simpler and lawyers do not like change. The final question asked was whether guardians were appointed for a limited duration. Seventy-nine per cent responded yes and twenty-one said no. When asked how many temporary guardianships were made during the last twelve months the respondents answered between 0 to 370.

The information provided by the jurists suggests that while it is desirable to promote limited conservatorship the occurrence of such limited conservatorship is small.

Finally the last portion of the survey examined the conservators. The survey questions centered around orientation and training of conservators, monitoring of conservators through court required reports and changes which should be made regarding conservatorship proceedings. On the first question, the jurists were asked if the court provided orientation, training or technical assistance for newly-appointed conservators. Twenty per cent responded that their jurisdiction provided training whereas eighty per cent did not.

The second question asked how often conservators are required to report to the court and what penalties are imposed for failure to file the reports on time. The answer was that seventy-one per cent of the respondents indicated that in their jurisdiction conservators are required to file annual reports. Failure to file the report in time would result in a show cause order; removal; non-payment of fees; citation; contempt; fine.

The last question asked the jurists to indicate in their opinion what were the most important changes which should be made regarding conservatorship proceedings for the elderly within your jurisdiction. The responses were: mandatory representation by counsel; more and better alternatives for community care; better training of fiduciaries; better reporting; creation of public guardian; education of the public.

Further information about the orientation, training and ongoing technical assistance for conservators revealed the broad and demanding duties of conservators.

"The duties of a guardian (conservator) for an elderly ward are broad and demanding. The commitment could entail dealing with; housing and long term care issues, financial issues, medical care issues, legal issues, personal visits and shopping, and the filing of court reports. The guardian (conservator) must be prepared and knowledgeable about visitation of a ward, protection and preservation of the estate, psychological and medical treatment, advocacy on behalf of the ward, encouraging adequate living arrangements, quality of life and socialization and seeking of restoration of the ward's rights".²⁶

The breadth of responsibilities for guardians illustrate the potential problem of having untrained conservators acting in a fiduciary capacity they might not understand.

The jurists recommended the creation of Public Guardians. Many states do not have public guardians but operate using private guardianship agencies.

"Some 34 states have statutory provision for public guardian services. Some programs operate under the supervision of the courts, some are operated by an independent state agency, others by a social service agency, and in still others a county agency administers the program. Some public guardianship programs are highly organized and staffed, while others are smaller and more personal. Sixteen programs provide services specifically for the elderly. In addition, private

profit and non-profit guardianship agencies are springing up in states with high elderly

²⁶. The Commission of Legal Problems of the Elderly American Bar Association and National Judicial College, Statement of Recommended Judicial Practices, June 1986, 53

populations.²⁷

The advocates for Public Guardian agencies indicate the merits for public guardianship are that there are many people who have no family or friends able and willing to assume the responsibilities of a guardianship. The problem is further compounded when the estates of these individuals are too small to pay for private guardians. Another claim is that if a public agency handled a large number of wards, greater efficiency could be gained by streamlining operations as opposed to an individual sole practitioner handling a smaller caseload. The detractors, on the other hand, point out there are shortcomings such as over-using public guardians when less dramatic measures can be used, and a concern that public guardianship programs are under-funded, with large caseloads without the time to develop personal relationships with the wards.

Finally the question arises as to how to effectively monitor the performance of conservators. One method of monitoring guardians is to establish procedures for complete and systematic review of conservator reports. The focus of such review would require the court to assure the least restrictive arrangement is used to protect the ward and that guardians and conservators are not abusing the ward and/or the

²⁷. The Commission of Legal Problems of the Elderly American Bar Association and National Judicial College, Statement of Recommended Judicial Practices, June 1986, 56.

conservatee's assets they are charged with protecting.

A National Model for Judicial Review of Guardians'

Performance.

In September 1991, a report on monitoring guardians performance was completed.²⁸ This particular study was a six-state study designed to develop a national model for judicial review of guardians' (conservators') performance in order to provide courts and state legislatures recommendations and supporting materials for use in improving the monitoring process. The key for preventing conservators from breaching their fiduciary duties is to have an effective court monitoring. The model deserves discussion to determine whether judicial monitoring can effectively monitor the ethical actions of all conservators.

The model describes eight elements to effective judicial monitoring:

Educational Materials

- "1. The court prepares a brief statement describing the basic features of guardianship and of the petitioning process and the major duties of guardians and conservators.
2. The court prepares a packet containing the statement of duties and responsibilities of guardianship, the specific time table giving all due dates to be met by the guardian, all the required forms to be completed during

²⁸ George H. Zimny, Barbara J. Gilchrist and Judith A. Diamond, A National Model for Judicial Review of Guardians' Performance, Saint Louis University, September 1991.

the first reporting period (bond, inventory, petitions, personal report, and account), a description of all or an example of actions taken by the court upon failure of the guardian to fulfill duties, the title and telephone number of court support staff, and any other necessary information.

General Care Plans

4. The court requires the guardians to submit a general plan for the care of the person and for the management of the estate of the ward.

Review of File

5. The ward's file is reviewed for completeness and accuracy of contents 90 to 120 days after appointment of the guardian.

Contents of Personal Reports and Accounts

6. The court specifies the required contents and format of the personal report.

7. The court specifies the required contents and format the account.

Filing and Receipt of Personal Reports and Accounts

8. The court requires that personal reports and accounts covering a 12 month period be filed annually within 30 days after the anniversary of the appointment.

9. The court sends a notice of personal report and account due to the guardian 90 days before the due date.

10. Upon receipt, personal reports and accounts are filed dated and set for hearing in 45 days.

Check and Audit of Personal Reports and Accounts

11. The file dated personal reports and accounts are checked for completeness.

12. The personal reports and accounts together are thoroughly audited and a sample of major items in each is verified.

Hearing

13. Interested parties are informed by the court of the time and place of the hearing on the personal report and account.

14. A hearing is held on the personal report and account.

Feedback to Guardian

15. The court informs the guardian of approval of the personal report and account."²⁹

The model is a recommendation to the court on improving judicial monitoring of conservatorships. The importance of this study and the resulting model is that the study pointed out shortcomings of judicial monitoring and what was needed to improve the current system.

The six courts which were studied in this project were selected because they had a reputation of doing a good job monitoring. If a court was able to do good monitoring the assumption one would have is that the court was able to detect abuse by guardians and conservators and take appropriate action. The problem lies in identifying what abuse is taking place and if the courts could detect any problems. In one example their study revealed:

"As an example, one court in this study had approved the account of a conservator after the usual thorough review. Within the year, however, a call from an agency that was not receiving its monthly payments for the ward's care led the court to investigate. It was found that the conservator, the sister-in-law of the ward, had used the ward's funds to pay for a heart operation for her husband, the brother of the ward. The letters from the hospital that had been included in the account were forged. If the conservator had continued to make the monthly payments, the court might never have detected the

²⁹. George H. Zimny, Barbara J. Gilchrist and Judith A. Diamond, A National Model For Judicial Review of Guardians' Performance, Saint Louis University, September 1991, 4-12.

abuse."³⁰

This example illustrates the problem when the integrity and ethical behavior of the individual are questionable. If the conservator is dishonest, the court would not be able to detect any fraud without a thorough independent investigation. The court without additional personnel would not be able to detect abuses of this nature.

Another general conclusion reached in this study is that the courts for the most part functioned well under the existing conditions. What the research indicates is that court staff were maintained at the same level and did not grow despite the increase of workload. Effective judicial monitoring involves additional personnel costs. The authors of this study made no recommendations as to who would pay for the various monitoring costs. The model they proposed could be implemented without adding costs. The authors believed that if some of the tools were implemented, the court would realize some savings and could redirect those savings to implement other recommendations.

The literature reviewed only discussed the sole practitioner handling one case. Most conservators are a relative or friend of the ward. Public agencies are appointed by the court where there is either no family willing or

³⁰. George H. Zimny, Barbara J. Gilchrist, Judith A. Diamond, A National Model for Judicial Review of Guardians' Performance, Saint Louis University, September 1991, 56.

available to assume responsibility for their family member or the family member is the abuser. Public agencies are usually scrutinized by the administrative or financial offices within the governmental body. There is no discussion as to the effectiveness of judicial monitoring over individuals or corporations who have undertaken the role of being a for-profit fiduciary. This could be the area where conflict of interest issues are rampant without the possibility of any court being able to detect conservator abuses.

Summary

Literature relating to the fiduciary relationship between guardians and their wards is quite limited. The most important articles relate to identifying the goals of what conservator should try to attain. This is further discussed in the Chapters Four and Five. But the problem lies in how the judicial system which has the primary responsibility of monitoring either unethical or ineffective guardians. Perhaps the addition of other mechanisms such as licensing requirements would provide more protection.

CHAPTER V

Ethical Conduct

Ethical conduct plays an important role in the fiduciary relationship between the conservator and conservatee. Ethics is defined as a discipline dealing with what is good and bad and with moral duty and obligation.³¹ Personal ethics can be viewed as personal morality in how individuals relate to other individuals with the aim to make people morally better. This special relationship between a conservator and his conservatee requires the highest degree of trust and loyalty.

Ethics or their fundamental principles are the root for guardianship standards. The philosophies which govern the actions of conservators deserve discussion because they serve as the basis for understanding guardianship standards. The best information on model standards is found in governmental publications relating to Model Standards for Guardianship and Representative Payee Programs presented to the U. S. House of Representatives Select Committee on Aging in 1989. The second article on standards was presented in the Whittier Law Review also completed in 1989. Both of the fundamental principles will be discussed and applied to one universal set of principles.

³¹. Jess Stein, The Random House College Dictionary, New York, 1979, 453.

Model Standard for Guardianship and Representative Payee
Programs

The Model Standards for Guardianship Programs are based upon nine fundamental principles. The principles relate directly to ethical considerations the guardians should exercise toward his/her ward. The goals are:

"Principle 1 Guardianship programs are required to implement, provide and actively seek out alternatives to guardianship where appropriate.

Principle 2 A guardian shall actively work toward the goal of limiting or terminating the guardianship...A guardian shall encourage the ward in the appropriate restoration, maintenance, or development of maximum self reliance and independence.

Principle 3 A guardian shall actively pursue that course(s) of action which comports with the principle of substituted judgement. Where reliable evidence of the ward's or beneficiary's views prior to appointment of the guardian does not exist, a guardian shall actively pursue the best interests of the ward, although these interests may conflict with the interests of the community, neighbors, caretakers, families, and other third parties. In pursuing the best interests of the ward or beneficiary, the guardian....shall attempt to effectuate the desires and objectives of the ward with respect to all matters, unless such desires or objectives are clearly not in the best interests of the ward.

Principle 4 Where a guardian has such authority, a guardian shall maintain the ward, if necessary, move the ward to the most normalized, and least restrictive, appropriate environment that manifests opportunity for independence and autonomy.

Principle 5 A guardian shall not exceed the bounds of his/her authority as described by the court and/or the laws and regulations under which he/she is appointed.

Principle 6 All wards, whether elderly, developmentally disabled, mentally ill, or subject to some other categorization shall be accorded equal procedural protection and safeguard.

Principle 7 All wards shall be delivered services in keeping with the standards set out in this document, no matter what their financial status or ability to pay for such services.

Principle 8 A guardian shall treat the ward with dignity and respect.

Principle 9 A guardian shall keep confidential the affairs of the ward, except: (1) for purposes of reporting to the court; (2) when it is necessary to disclose such information for the best interests of the ward, or (3) when the ward, if capable, has given his/her informed consent to the disclosure of such information."³²

Ethical Code for Guardians

The ethical behavior for conservators is closely tied to the principle of pareis prentisis. The most recent article dealing with ethical standards for guardians was published in the Whittier Law Review, July 1988. Under this Model Code, the authors presented six rules. Each rule relates to a fundamental principle using established legal principles in areas such as decision-making, the relationship between guardian and ward, custody of the person, establishing a place of abode, consent to care, treatment and services, management of the estate, termination and limitation of the guardianship.

The rules are:

"1. A guardian shall exercise extreme care and diligence when making decisions on behalf of a ward, all decisions shall be made in a manner which protects the civil rights and liberties of the ward and maximizes opportunities for growth, independence and self reliance.

2. The guardian shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward.

³². U.S. House of Representatives, Select Committee on Aging, "Model Standards to Ensure Quality Guardianship and Representative Payee Services", 100th Cong. 1st Session, (October 1989) 70-72.

3. The guardian shall assume legal custody of the ward and shall ensure the ward resides in the least restrictive environment available.

4. The guardian shall assume responsibility to provide informed consent on behalf of the ward for the provision of care, treatment, and services and shall ensure that such care, treatment and services represents the least restrictive form of intervention available.

5. The guardian of the estate shall provide competent management of the property and income of the estate in the discharge of this duty, the guardian shall exercise intelligence, prudence, and diligence and avoid any self interest.

6. The guardian has an affirmative obligation to seek termination or limitation of the guardianship whenever indicated."³³

Discussion of Model Ethics

The first important aspect of ethical conduct stresses the importance of the conservator in using care and diligence when making decisions on behalf of the ward. The decisions must take into consideration protection of civil rights and liberty while promoting independence and self-reliance. The Federal Model Standards guiding principles discusses the use of seeking the conservatees preferences and using the concept of substituted judgement in decision-making. Concepts of substituted judgement and best interest decision-making provides inherent problems faced by the conservator because of potentially conflicting goals.

To illustrate this problem take an example of a

³³. Michael D. Casasanto, Michell Simon, Judith Roman, "A Model Code of Ethics for Guardian", Whittier law Review Vol. II, no. 3 (1989) 552-566.

conservator seeking a conservatorship order. The conflict arises when the conservator seeks the conservatorship order taking protective custody over the incapacitated person while at the same time stripping the conservatee of certain rights such as making medical decisions, the right to decide where to live, or handle money. In effect the guardian is requesting that certain rights and powers be transferred to him/her thereby stripping the ward of those rights.

Let us take the hypothetical situation of Mr. Booth, an 86 year old gentlemen residing in his own home. Since he is strongly independent he is quite opposed to having someone come into his home, yet he is unable to cook for himself or keep his home marginally clean. Unfortunately, Mr. Booth is starting to become forgetful and at times forgets to make his house payment or pay his electrical bill. A neighbor quite concerned about his condition makes a referral to the public guardian. A representative of the public guardian's office visits Mr. Booth. At this time the representative conducts several assessments including self-care evaluation, mental status examination and an environmental inspection at the home. The end result is that Mr. Booth does require a conservatorship because physical frailties and moderate memory impairment pose serious disabilities. Mr. Booth could probably remain in his own home with in-home support services available on a regular basis. Mr. Booth is adamantly opposed to the conservatorship and is strongly offended that someone

is intruding in his life. What does the potential conservator do in this situation? Certainly, the concept of promoting independence in allowing Mr. Booth to continue on with his life without intrusions will eventually create serious problems at the same time the principle of substituted judgement comes into play. This is where the first inherent conflict will arise. Respecting the wishes of the conservatee, the conservator should continue on with the conservatorship petition, however, at the same time ensure the conservatee's civil rights are protected by not imposing the conservatorship until the ward has his/her "day in court." Other civil rights protection include the right to be given notice of the proceedings, the right to attend the hearing, the right to counsel and the right to oppose the appointment at a jury trial.

Another equally important keystone is that the conservators of the estate shall provide competent management of the property and income of the estate in the discharge of their duty. Conservators must exercise intelligence, prudence, and diligence and avoid any self interest. In order to meet this requirement conservators must be knowledgeable of their fiduciary responsibilities and duties and carry out competent management. Additional ethical consideration must be given to ensure conservators are honest and should not use the estate of the ward for their own personal use. Avoiding conflict of interest is also quite important. Some recent blatant examples

of unethical behavior include conservators influencing their ward to change provisions of their will to make conservators estate beneficiaries. Equally disturbing are cases where conservators place the conservatees money in financial institutions where the conservators have ownership interests.

Summary

Ethical behavior is important between conservators and conservatees. Since conservators have a duty to exhibit the highest degree of trust, loyalty, and fidelity in their relationship to conservatees, conservators must always be mindful of their ethical conduct. Since conservatees suffer from some degree of impairment where they cannot protect themselves it becomes more important for conservators to exercise impeccable behavior. If conservators breaches their duty, the court should be in position to rectify the situation.

CHAPTER VI

Model Standards

The criteria for establishing conservatorships are generally found in the individual states' probate codes. The code defines the legal responsibilities and duties of conservators toward their conservatee. Since each state developed its own set of laws and regulations, there are different sets of laws relating to conservatorship for incapacitated individuals. The Uniform Probate Code is a text approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association in 1969. The states have the option of adopting the Uniform Probate Code (Sixteen states have done so.) or must create their own.

Uniform Probate Code

The Uniform Probate Code outlines a couple of general duties and responsibilities of the guardian. It is noteworthy to identify certain areas in order to establish specific standards for the guardian or conservator.

"Section 5-306 (Findings; Order of Appointment) (a) The Court shall exercise the authority conferred in this Part so as to encourage the development of maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's mental and adaptive limitations or other conditions warranting the

procedure.

(b) The Court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person."³⁴

The conservator should be promoting independence in caring for the conservatee/ward and should only be asking for protective orders in areas where the ward suffers a disability.

When conservatees are unable to properly care for themselves the conservators are responsible for providing care and custody. This provision would imply conservators should know their conservatees capabilities, needs, and wishes. Conservators should ensure their conservatees are properly housed, clothed, fed, and receive proper medical care.

Guardians have additional responsibilities in managing the estates of their wards. This includes expending income to provide for the support, education, care or benefits of the protected individual. Conservators can have powers conferred upon them consistent with the law of trusts. In other words, conservators can invest the funds of conservatees, receive additions to their estates, participate in the operation of any business, buy or sell estate assets, enter into contracts on behalf of the conservatees, vote a security, exercise any stock subscription or conversion rights.

³⁴. Uniform Probate Code 19th Edition, St. Paul, Minn., (1991) 396.

Guardians have a broad range of power and authority to care for incapacitated persons. In order to exercise such power and authority conservators must have sufficient knowledge to carry out their duties. Unfortunately, the Uniform Probate Code, as with most state regulations, provides no educational or training requirements for conservators. There is, however, an implied premise that guardians should have some understanding of their conservatees' capabilities and limitations. When it applies to estate matters, conservators should have some understanding of assets such as real property, personal property, investments, and securities. Otherwise conservators would be unable to carry out their fiduciary responsibilities.

National Guardianship Rights Act of 1991

Several years ago, former Congressman Edward Roybal, (D-California) introduced legislation cited as the "National Guardianship Rights Act of 1991." This proposed legislation was referred to the House Judiciary Committee who then referred the bill to the Civil and Constitutional Rights Subcommittee. As of this writing, this bill has not been adopted. The importance of this legislation is that it recognizes that incapacitated individuals throughout the United States are being deprived of basic constitutional rights. If passed, this Act would impose minimum guardianship

standards upon all states.

The issues this Act addresses are the denial of constitutional rights, removal of rights, difficulty in dissolution and lack of civil rights protection under state law. The Act says:

"State laws generally have failed to provide adequate protection against unwarranted and overly restrictive guardianship orders, appointment of unfit guardians, and abusive practices by guardians, as illustrated by the following:

...(E) STANDARDS FOR GUARDIANS - No State has minimum standards of experience, education or intelligence for becoming a guardian.

(F) PROHIBITION ON FELONS AS GUARDIANS Only seven states prohibit convicted felons from being appointed guardians.

(G) OVERSIGHT OF GUARDIANSHIP ORDERS Courts that issue guardianship orders rarely conduct any follow-up check regarding the orders.

(H) REPORT BY GUARDIANS Twenty-two (22) States lack a requirement that the guardian file an annual report regarding the well-being of the protected person.

(I) ACCOUNTING BY GUARDIANS Nineteen (19) States lack a requirement that the guardian provide an annual accounting of the assets of the protected person."³⁵

The purpose of the National Guardianship Act of 1991 is to enforce the guarantee of the 14th Amendment of the Constitution of the United States relating to alleged incapacitated individuals by establishing national standards. Under this Act, alleged incapacitated individuals would have certain basic rights. For example, they would be assured the

³⁵. U.S. Congress, A Bill to Protect the Rights of Persons to Due Process of Law and Equal Protection of the Laws of Guardianship Proceedings, 102d Cong., 1st sess. H.R.800., 3

right to prompt notice that the guardianship petition be given to the alleged incapacitated individual and their family. The notice would have to contain the date, time, and place of the proceeding, a clear statement of the rights of the alleged incapacitated person, an explanation of the potential legal effects on the alleged incapacitated person of the guardianship order and individual rights that can be restricted or transferred. These include rights to: (1) marry or divorce, (2) vote or hold office, (3) enter into contracts, (4) revoke wills, (5) sue and be sued, (6) appoint an agent etc.

Other sections address the right to be present at the proceeding, the disability to be established by an independent professional guardianship evaluation team appointed by the court, the right to counsel, the right to a jury proceeding, right to present evidence, call witnesses, and cross examination.

The Act also raises the issue of the right of the alleged incapacitated individuals to have competent and trained guardians. The Act provides that:

"An incapacitated person shall have the right to have a guardian who is found by the court to be of sufficient competence to perform the duties necessary to protect the interests of the incapacitated individual and of suitable character for the disposition of the duties of a guardian. An individual appointed by a court to serve as guardian shall receive thorough instructions and training, prior to and during the guardianship, necessary to enable the individual to carry out the responsibilities as guardian. Instructions and training

shall relate, to the greatest extent possible, to the following:

(A) FIDUCIARY DUTIES The fiduciary duties of the guardian.

(B) AGING PROCESS The process of human aging.

(C) SERVICES The availability of social and health services in the locality in which the incapacitated individual resides.

(D) LEAST RESTRICTIVE ALTERNATIVE DOCTRINE The technique of fulfilling the responsibilities as guardian in a manner that involves using the least restrictive means possible with regard to the exercise of the rights of the protected person while protecting welfare, safety and interests of the protected person as specified in a guardianship order.

(E) ACCOUNTING AND REPORTING Financial accounting and the responsibilities of reporting to the court.

A person who has been convicted of a felony under State law or the law of the United States may not be appointed to serve as the guardian of an incapacitated individual."³⁶

The proposed Act continues to require that the court retain the primary responsibility of supervising guardians. This is accomplished by the guardian reporting to the court that issued the guardianship order. The report is an annual document delineating the financial, mental, physical, and personal status of the incapacitated individual. Such reports will be examined later in this study. Since the supervising court has jurisdiction over the guardian and ward, it should review the reports, substantiate the validity of any report and correct any deficiency discovered. If the guardian fails to correct any deficiencies, the court should remove the

³⁶. U.S. Congress., A Bill to Protect the Rights of Persons to Due Process of Law and Equal Protection of the Laws in Guardianship Proceedings, 102d Cong. 1st sess., H.R. 800., 17-18.

guardian and impose sanctions if any financial improprieties occur.

The issues addressed in this bill illustrate federal concern over abuses in the guardianship process. It remains to be seen, however, if the bill will pass and if the federal government will mandate rules and regulations pertaining to guardianship.

There are several policy issues related to mandating federal rules upon the state. One issue deals with the lack of information to make informed policy decision since there are no data documenting the extent of conservatorship abuse. This is the same problem policy makers in California face since there are no statewide data indicating the number of conservatorships. Another issue is the regional development of conservatorship laws throughout the country. The six-state study on judicial monitoring point out the variations in state law related to the criteria for establishing conservatorship, notice requirements, and court reports. Equally important are the public agencies given the responsibility to administer conservatorship estates. While states like California have a large public conservatorship program there are other states who have no public agency involved with this particular type of service. Finally, another public policy issue is how federal intervention occurs. Should there be a regulatory agency overseeing conservatorship issues to address questions such as uniformity of laws, due process protection, and

transferring cases from one jurisdiction to another? Should the federal government pay for conservatorship services? Two major target populations, frail older adults and physically incapacitated adults who have no family, need decision-makers. How many people are affected? Clearly more data are needed before any informed decision can be made about federal intervention.

Federal Model Standards for Guardians

Model Standards to ensure quality guardianship services were presented to the U.S. House Subcommittee on Housing and Consumer Interests. Some of the standards were introduced in this research project as a basis for the questionnaire administered and subsequent evaluation.

"Standard 1. Duties of the guardian of the Person

If the guardian of the person has been granted such authority by the court, the guardian shall have the following duties and obligations to the ward: (1) to see that the ward is appropriately housed. (2) to ensure that provision is made for the support, care, health and maintenance of the ward. (3) secure for the ward medical, psychological and social services, training, education, and social and vocational opportunities. (4) to keep confidential the affairs of the ward. (5) to file with the court all reports required pursuant to state statute, regulations or court rules.

Standard 2. Duties of the Guardian of the Estate

The guardian of the estate shall have the duty to manage the ward's property...In carrying out this duty, the guardian of the estate shall maintain the ward's lifestyle to the extent possible. If the guardian has the appropriate authority, this responsibility entails the obligation to: (1) Act as the fiduciary of the ward, performing duties responsibly and honestly for the

benefit only of the ward. (2) To keep confidential the affairs of the ward. (3) To keep accurate records of all payments, receipts, and financial transactions undertake on behalf of the ward. (4) Ensure that all goods and services purchased on behalf of the ward are properly delivered and rendered. (5) To allow the ward the opportunity to manage funds as appropriate. (6) To post and maintain a bond. (7) To comply with all requirements of the court including, but not limited to: the duty to file an inventory of the ward's assets, the duty to file accounting's and other reports as required by the court. (8) To carry out all other duties and obligations required by state statute which may include the duty to (a) apply the ward's income, principal and other resources for the comfort and support of the ward. (b) prosecute or defend against legal actions. (c) perform contracts entered into by the ward before the onset of the ward's disability. (d) when authorized by the court, execute and deliver any bill of sale, deed, or other instrument. (e) settle, contest or release claims against the ward. (f) pay taxes and other reasonable expenses incurred on behalf of the ward. (g) Invest funds of the ward, as would a prudent person managing his or her own financial resources for the ward's future needs.

Standard 4. Avoidance of Conflict of Interest

A guardian shall avoid all conflicts of interest and even the appearance of a conflict of interest. An appearance of a conflict of interest arises where the guardian has a personal or agency interest which has the potential to adversely affect the interests of the ward or beneficiary. Specifically: (1) A program shall not provide housing, medical or social services to an individual if the program is also acting as guardian for an individual. The program's duty is to coordinate and ensure the provision of all necessary services to the ward rather than to provide those services directly. (2) A program providing formal advocacy services shall not serve as guardian to any person. (3) A program shall not act as the petitioner in a guardianship proceeding, or serve as guardian ad litem or as court appointed visitor or investigator in a guardianship proceeding. (4) A guardian shall not commingle personal or program funds with the funds of a ward. (5) A guardian shall not sell, transfer, convey, or encumber any interest in real or personal property to staff of the program, a spouse of a staff member, a board member of the program, a spouse of a board member, an agent or attorney of the program, or its staff has a substantial beneficial interest. (6) A program or its staff shall not borrow funds from or lend funds to the ward.

Standard 5. Rights of Wards and Beneficiaries

A ward retains all legal and civil rights guaranteed to residents under the State and United States Constitution and all the laws and regulations of the State and the United States except those rights which by court order have been designated as legal disabilities or which have been granted to the guardian by the court. These rights include: (1) the right to exercise control over all aspects of his/her life not delegated to a guardian. (2) The right to be treated with dignity and respect. (3) The right to guardianship services suited to his/her condition and needs. (4) The right to privacy. (5) The right to have personal desires, preferences, and opinions given due consideration. (6) The right to petition the court for termination or modification of the guardianship. (7) The right to procreate... (9) The right to marry. (10) The right not to undergo sterilization. (11) The right to vote. (12) The right to execute a will, living will, durable power of attorney, or any other declaration of intent. (13) The right to retain an attorney.

Standard 7. Personal Contact and ongoing Responsibilities

(A) The guardian shall formulate short and long range plans for the ward outlining the goals of the program and the client, and the target date set for completion of each goal and shall engage in ongoing activities and responsibilities to effectuate those plans. (B) A program shall work cooperatively with other surrogate decision-makers, including another guardian to further the interests of the individual. (C) Guardians of the person shall have meaningful visits with their wards no less than once a month. Guardians of the estate shall have meaningful visits with their wards no less than quarterly. (D) Where the guardian has proper authority, a meaningful visit shall consist of, but is not limited to, the following activities: (1) Communication with the ward. (2) Conferences with service providers/caregivers. (3) Examination of any charts or notes kept regarding the ward. (4) Assessment of the appropriateness of maintaining the ward in the current living situation. (5) Assessment of ward's physical appearance and psychological and emotional state. (6) Assessment of the repair, cleanliness, and safety of the living situation. (7) Assessment of the adequacy and condition of the ward's personal possessions. (E) The guardian shall keep a written summary of all personal contact with the ward. (F) Guardians shall petition the court for limitation or termination of the guardianship when the ward no longer meets the standard to which the guardianship was imposed.

Standard 8 Ward's Living Situation Guardian of the Person's Duty to Monitor the Living Situation. Where the guardian has appropriate authority, he/she shall carefully monitor the living situation of the ward. The following factors should be examined and evaluated in monitoring the ward's living situation. (1) The ward's wishes with respect to his/her living situation. (2) Where the ward is in a facility, the quality of life offered by that facility. (3) Whether the living situation provides the most appropriate least restrictive living arrangement available. (4) Whether the living situation meets the needs of the ward with minimal needed intrusion on the privacy and autonomy of the ward. (5) The physical condition of the living situation including cleanliness, repair, and safety. (6) The effect a change in living situation would have on the ward's psychological, emotional, social, and physical condition. (7) The geographical proximity of the living situation to visiting family and friends. (8) The effect the geographical location of the living situation has on the guardian's ability to see to the care, comfort, and maintenance of the ward.

Standard 9 Securing Medical Services and Authorizing Medical Treatment Duty to promote the maintenance of the ward's health. A guardian having appropriate authority has the duty to actively promote the maintenance of the ward's health...A guardian having appropriate authority shall proceed in a manner indicated when called upon to make a medical decision for a ward: (1) The guardian's decision shall be controlled by any specific wishes of the ward, expressed prior to the appointment of a guardian. (2) If the ward made no specific declaration of intent prior to appointment of a guardian, the guardian shall use whatever general knowledge (s)he has of the ward to make a decision based on a substituted judgment standard. (3) Where reliable evidence of either the ward's prior specific or general wishes does not exist, the guardian shall make a decision based on the perceived best interests of the ward.

Standard 12 Programmatic Requirements (A) The program shall have a sufficient number of staff to adequately carry out, for all clients, all the duties required by statute, and the letters of authority. (D) Professional program staff, both volunteer and paid, shall attend and successfully complete 30 or more hours of orientation training and 8 or more hours of annual continuing education. The curricula for training shall address, but is not restricted to, the following issues: (1) The consequences of guardianship to the individual. (2) Use

of the least restrictive alternative doctrine, including an examination of the legal and social service alternatives to guardianship and their risks and advantages. (3) Guardianship statutes and court proceedings. (4) The role and duties of the guardian including an examination of ethical considerations faced by guardians. (5) Record keeping. (6) Administration and review of cases. (7) Reporting requirements. (8) Public benefits, social services, and pre-arranged funeral agreements. (9) Health care. (10) Working and communicating with clients, (11) Issues specific to the various client populations including unique issues relative to persons who are older, who are mentally ill, or who have developmental disabilities. (12) Case closing. (13) Property management. (F) The program shall be available to provide emergency and on-call services 24-hour a day, seven days a week. (G) The program shall implement, and put into writing a grievance procedure. (J) The program shall provide for an annual fiscal review of both program and client accounts consistent with generally accepted accounting principles.

Standard 13 Fees Where permitted by the court, a program serving as guardian may charge reasonable fees to help defray the cost of its services. However, no fee may be assessed against clients for whom the program already receives funding for services provided. In addition, fees charged may not be paid from the personal allowance permitted under certain public benefits programs. The fee charged must take into account the ability of the client to pay and in no event may a fee be taken from a client with an annual income at or below the current federal poverty level unless such fee can be offset by a increase in public benefits provided to the client, and will therefore not affect the client's discretionary income. Absent the rendition of extraordinary services, fees shall not exceed 5% of the ward's income.

Standard 14 Review of Cases (A) Internal Review. Periodically, but no less than once a month, a sampling of the program's caseload shall be reviewed by program staff. Each case handled by the program shall be reviewed no less than every 6 months...(B) Outside Review. Periodically, but no less than once every 6 months, a committee of objective third party reviewers shall review a sampling of the program's cases."³⁷

³⁷. U.S. House of Representatives, Select Committee on Aging, Model Standards to Ensure Quality Guardianship and Representative Payee Services. 100th Cong., 1st sess., October

These standards are only ten of the fifteen standards presented to the United States House of Representatives, they provide a basis for the general duties and responsibilities of the conservators over their conservatees.

Summary

The Uniform Probate Code, the Guardianship Rights Act of 1991, and the Federal Model Standards all embrace certain themes. The most notable theme is that conservators should work at promoting independence and self determination on behalf of their conservatees. Any conservatorship order should consider the disability and needs of the conservatee. This would require conservators to conduct assessments to determine the necessity of the conservatorship, only request those powers required to care for conservatees, manage their estates and if at all possible follow the conservatees' preferences.

The second major theme is that conservators should have sufficient competency to manage the estates of conservatees. Conservators of estates should possess knowledge to adequately handle tasks such as investing funds, managing real property, sureties, businesses, and other personal property.

The third theme is the avoidance of a conflict of interest. This theme could range from not actively pursuing

cases to not commingling the assets of conservatees and conservators. Not to be overlooked is placing the conservatees money in financial institutions where conservators have a financial interest, or even placing conservatees in homes owned by conservators.

These themes were examined in the state-wide questionnaire conducted for this study and the evaluation of a public and private conservator.

CHAPTER VII

California Public Guardian Questionnaire

Statement of the Problem

The relationship between guardians and their wards should be one of trust and loyalty. Whenever there is breach of this loyalty the ward is the one most likely to suffer. The ethical behavior and competency of the guardian play an important role in ensuring the ward receives proper care, treatment and estate management. The problem is three-fold: the first is the ethical conduct and competency of the guardian, second, do valid standards exist on how a conservator should perform and third the ability of the court to effectively monitor guardians.

Methodology

Two research methods were utilized in this investigation. A self-administered questionnaire (Appendix I) was developed to determine the philosophy, goals, training methods, and practices of public guardians in areas of inherent conflict of interest such as fee collection and appointment processes, and opinions on the effectiveness of judicial monitoring for private professional conservators. This questionnaire was

administered to 110 California public guardian employees at a conference in March, 1992. Fifty-seven (57) questionnaires were returned completed at the conclusion of the conference. Thirty-two out of a possible fifty-eight county representatives answered the questionnaire. The employees ranged from the department heads to line employees such as deputy public guardians and estate investigators. The estimated statewide caseload for mental health conservatorships was 9,546 while the probate conservatorship caseload was reported as 5,424 bringing the total to 14,970. This number was estimated by using the highest ranked guardian for those counties having more than one person responding to the questionnaire and adding the caseload total of the other single replies.

The questionnaire contained both closed-and open-ended questions. Closed-coded responses were tabulated as simple numbers and percentages. Some of the respondents did not answer all the questions. Open-ended questions were group together according to the content of the answers.

The second method was to identify three conservator performance areas, specifically (1) the ward's care, (2) compliance with legal requirements, and (3) practices collecting fees for services. Then a research technique was devised to investigate these three areas. The technique consisted of identifying policies, procedures and practices in caring for the wards. Those policies and practices were

examined in relationship to model standards identified earlier in this paper. Information to complete the questions relating to policies and practices was obtained by personally interviewing the conservator, the conservator's employees, reviewing policies and procedure manuals, and personally reviewing a total of ten (10) conservatorship files (Refer to Appendix III, IV, V, VI, VII, and VIII).

Conservatorship Questionnaire

The questionnaire focused on training, fiduciary philosophy and practices in caring for wards, policies and practices in guardianship appointment, fees where there can be conflict of interest, program staffing and internal audit. Finally, the questionnaire examined what the public guardians perceive as the court's ability to effectively monitor private professional conservators.

Findings

Ethical Training

Ethical behavior such as honesty, integrity and loyalty are important traits for any conservator so that fraud, abuse or neglect are minimized. Since there is no professional licensing for conservators to learn about ethical conduct,

educational awareness becomes more important. The majority of public conservators were not trained in the ethical duty of a fiduciary. Where there were affirmative responses on ethical behavior for fiduciaries the information was passed from a senior employee to a newer employee. Professional organizations such as the California Association of Public Administrators and Public Guardians/Conservators were noted as providing training on ethical conduct.

Goals for Conservators

Themes such as the promotion of independence, autonomy, self determination, and consideration of the wards preferences when making decisions on behalf of the conservatee are often mentioned when examining model standards for conservators. The single question relating to the philosophy of conservatorship goals revealed that most public guardians (86%) believed the purpose of conservatorship was to monitor the ongoing care and treatment of the incapacitated individual. One explanation could be that individuals placed under conservatorship are so severely impaired that little can be done to promote autonomy or independence. Another factor to consider is that the estate has insufficient resources such as the ability to hire caregivers to closely promote independence such as freedom of movement.

Conservatees' preferences relating to medical care,

placement, funeral arrangements were sought by public conservators. The majority of conservators (96%) indicated they sought and considered the opinions of conservatees as they related to medical care, placement and funeral arrangements (Question 2). Surprisingly, when public conservators were asked what factors they considered when making medical decisions, 41% of the respondents indicated the wishes of the conservatee were considered (Question 11). The remaining 59% of the respondents used other factors such as best interest of the conservatee, medical advice, and the standard of living when making decisions. Another open-ended question asked about what factors the conservator considers when selling the principal residence of the conservatee (13). Twenty-two percent of the respondents indicated that the conservatee's wishes, along with other factors such as the ability of the conservatee to return home and the clients needs were considered. The highest response (45%) said that the major decision-making factors were the likelihood that the client was able to return home, the impact of home ownership on benefit eligibility and the need to convert the asset to cash. The question reveals conflicting goals conservators must face. On one hand, conservatees desire to retain ownership of their principle residence even though financial considerations would require that the asset be sold. If conservators ignore the more pressing financial condition of their estates and follow the wishes of their conservatees,

perhaps more effort would be made to retain the principle residences depending upon the equity and cash flow. Since public conservators earlier indicated they sought the preferences of their conservatees, it would appear there should be the more effort sought when seeking the wishes of their conservatees when selling major assets.

Competency of Guardians: Inadequate Training

Since it is difficult to ascertain the competency of conservators in this self-administered questionnaire, questions were asked about training personnel. (Question 5) On-the-job training was the most popular response (42%). Clearly, having senior personnel train newer employees was important. Another important training resource was the state-wide professional organization (23%). Formal training and orientation were provided by some conservatorship agencies, (19% of the responses), written policies and procedures were identified as training tools for 9% of the respondents. Finally, a small percentage (6%) of the respondents indicated they learned by doing.

These results highlight the problem of adequately training conservators. Most public agencies have sufficient staffing to allow senior employees to train newer employees. Yet, there are a number of small public guardian agencies that could encounter serious problems once the public conservator

left.

In essence, the small public conservator office and sole proprietorship private conservator can be faced with the same dilemma providing training. Both conservators would learn by doing. Thus, professional organizations, either public or private would be invaluable for training fiduciaries. One can conclude that if a public/private conservator belonged to a professional organization, there is a better chance the fiduciary was competent.

Conflict of Interest Issues

Conflict of interest occurs in the inappropriate establishment of a conservatorship, compensation for services rendered and when a conservator can realize a personal gain to the detriment of the ward. One conflict is the premature conservatorship over persons against their will when they are still able to manage their affairs. The conservator in situations like this can make decisions over residence and the estate potentially contrary to the ward's wishes. The questionnaire asked about written policies on who is eligible for conservatorship service (Question 3). Policies would be in addition to the legal criteria already established by the state legislature. Sixty percent (60%) of the respondents did not have written criteria as to who is eligible for conservatorship services. This leads to the conclusion that

public guardian agencies conducting their own investigations only look at the legal criteria in establishing conservatorships.

The second potential area where conflicts of interest can arise is in the conservator's compensation. Since many of the conservatees suffer a combination of physical and mental disabilities, they are not in a position to agree to the compensation sought by the conservators or be in a position to verify if the services billed for were actually rendered. Thus, when the conservator asks the judge to approve the fees, the conservatee might be unable to complain about the conservator's hourly rate or the necessity for services. To illustrate this point, say for example, a conservator could potentially charge his/her conservatee \$60.00 an hour to visit his conservatee in a skilled nursing facility. So the conservator visits his/her conservatee twice a month for one hour. The conservatee must then pay \$120.00 a month to be visited. The Federal Model Standard recommends at least one visit per month. If the conservatee can afford the fees he will be charged for the visit, but what happens if the conservatee can not afford the service? Is the service reduced or simply not rendered? The judge must ultimately decide on the reasonableness of the fee, but if there is no one to object to the fee, the judge may simply approve the fee request.

An overwhelming majority of public guardians (93%)

reported having fee collection policies (Question 6). Many respondents indicated their fee requests were deferred until the conservatorship was terminated or when the estate was able to pay the fee. If the conservatorship estate was unable to pay the fee, the public guardians waived their fees. Public sector conservators reported they provided the same level of services to all their conservatees regardless of payment.

Civil Rights Protection

Public guardian respondents believed that certain rights should be retained by the conservatee (Question 10). These rights included the right to be treated with dignity, the right of privacy, the right to have personal desires, preferences, and opinions given due consideration and the right to grieve against the program.

Conservatorship Standards

The questionnaire elicited some responses aimed at specific Federal Model Standards for conservatorship mentioned earlier in this research project.

The duties of a conservator of the person includes an obligation to see that the ward is adequately housed. The fundamental principle behind this standard is that the guardian shall maintain the ward to the most normalized and

least restrictive appropriate environment that manifests opportunity for independence and autonomy. The question asked how the respondents determined the most appropriate placement (Question 8). The cumulative answers totaled 86 which suggests the respondents circled more than one response. The responses indicate that deputy public guardians conducted the placement assessment (47%). Licensed clinical social workers or registered nurses placement assessments were followed by 28% of the respondents. Placement assessment completed by physicians were used by 26% of the respondents.

Visitation conducted in order to determine conservatees provisions for support, care, comfort, health and maintenance must be completed periodically (Question 7). The Federal Model Standards recommend that conservators should have meaningful visitations with their conservatees no less than once a month. Public guardians reported that monthly visits occurred rarely (7%). The general practice was that conservatees were visited quarterly (53%) and more often if needed (an additional 16% of the respondents).

The second Federal Model Standard on the duties of the estate conservators includes responsibilities to keep accurate records of all payments, receipts, and financial transactions undertaken on behalf of the conservatees, ensure that all goods and services purchased on behalf of the conservatees are properly delivered and rendered and when authorized by the court, execute and deliver any bill of sale, deed, or other

instrument. The questionnaire sought information on whether or not written policies and procedures existed for paying bills and managing real and personal property (Question 9). Thirty-five percent of public guardian respondents indicated their offices had policies on paying bills. Eight of fifteen respondents indicated the policies explained what bills were appropriate to pay. The remaining seven respondents reported office policies focused on processing the bill. This suggests most public guardian agencies rely upon internal training to educate deputy public guardians on what bills to pay. Since training is conducted on-the-job, there could be the possibility of either bill-paying training being overlooked or bills being paid inconsistently against existing probate laws.

When conservators handle real and personal property, the majority (64%) of public agencies had written policies on handling real and personal property (Question 12).

The responses to these questions illustrate not only the complexity of handling the estates but also the difficulty in supervising the work of deputy conservators. Most public guardian respondents reported their offices had written policies and procedures for handling real and personal property. When conservators manages real property they must inspect the premises, review title vesting and any encumbrances against the property. Next conservators must decide if the property is to be rented, sold or allowed to remain vacant. Clearly public guardian agencies have

procedures on how real property is to be managed. Personal property can include collectable items such as jewelry, stamps, coins, furniture etc. The conservatorship estate is highly vulnerable to theft during the period the property is being marshalled either by burglars, family members claiming possessions prematurely, or unethical conservators. This can easily be accomplished by a person entering the conservatee's premises alone and confiscating cash, jewelry, art objects etc. If a conservator has a policy of using witnesses when picking up property the likelihood of absconding with the assets might be reduced. The inclusion of a witness, while not infallible, strengthens financial internal control.

Program Standards

The questionnaire asked public guardian agencies general information about their programs. The Federal Model Standards recommend that guardianship programs shall have sufficient number of staff to adequately carry out all the duties required by statute. When asked about program staffing, most public guardian respondents (73%) reported having insufficient staffing (Question 14). Despite the perception of insufficient staffing, 74% of the public guardians indicated their program was available 24 hours a day (Question 15). Internal fiscal reviews are mentioned in Federal Model Standards program requirements. The recommended reviews include internal and

external reviews. Forty-two percent (42%) of public guardian respondents indicated there was a systematic review of conservatorship cases (Question 16). Only nineteen (19) of the respondents provided additional information about the nature of the review. Eight respondents indicated reviews occurred at the time the annual client accounting was filed with the court. Five respondents indicated a supervisor reviewed cases at the time of employee evaluations. Only one respondent said internal audits occurred randomly.

The respondents (49%) indicated their programs were subject to outside review (Question 17). Twenty-five respondents listed who conducted the reviews. The county grand jury and the county auditor were agencies providing outside reviews. One respondent indicated that an outside review was conducted by an independent auditor and a second respondent reported that a conservatorship advisory committee conducted a review.

Private Conservators

The last section of the questionnaire asked public guardians about private conservators. Public guardian agencies are often appointed successor conservators when the conservatorship estate is depleted. Sixty-eight percent (68%) of the respondents have had contact with private conservators (Question 18). Private professional conservators are

individuals who register with the court as a professional conservator. Family members who are appointed as conservators are private conservators. Slightly more than half the respondents (53%) reported that they or someone in their office encountered problems with private conservators (Question 19). However, only 21 respondents specified the type of problems encountered. Four respondents perceived that conservators did not understand their responsibilities, committed fraud or exerted undue influence. An additional four respondents indicated that private conservators created fraud. Three respondents believed that conservators were not accountable, provided poor service and charged excessive fees.

Less than one-half of public guardian respondents indicated encountering problems with private conservators. Upon further examination of the questionnaires, it appears respondents from urbanized areas encountered more problems with private conservators. The problems identified by public sector conservators indicate the major problems facing private sector conservators are competency and ethical conduct. The most severe comments suggest criminal activity occurring against the conservatees. It is fair to conclude that by the nature of the cases they receive from private conservators public guardians hold fairly negative perceptions of private conservators. It should be emphasized that the study did not ask public conservators if the problem private conservators belonged to any professional association. Thus, the same

problem private conservators could be equally troublesome to ethical professional conservators.

Court monitoring was another element addressed in this questionnaire. The majority of public guardian respondents perceived that courts did not monitor the performance of private professional conservators (Question 20). The comments suggested that judges were not objective and were not able to see all the problems which could occur in a conservatorship since certain activities such as unpaid bills, overdrawing accounts and receiving kickbacks were not disclosed in an accounting. Some public guardian respondents reported that judges penalized private conservators (25%) and the penalties included jailing the conservator, reducing fees and issuing contempt charges. However fifty-one percent (51%) of the respondents perceived the court as not penalizing private conservators (Question 21). Three respondents commented that the court did not surcharge conservators for errors, failed to penalize conservators for not completing accountings and approved high fees. One public guardian respondent noted that when the private conservator is removed the case is reassigned to the public agency.

Guardians were asked to comment on their perception of the standard of care by which conservators were judged (Question 22). Fifty-four (54%) of the respondents reported that public guardians were held to a high standard of care. Some of the comments included perceptions that the court

required public guardians to complete more reports, held public agencies as professionals and the court expected more of public agencies for less compensation. Interestingly, some respondents indicated that the court investigator tried to influence some appointments to private conservators because personalized services would be available.

Some respondents were able to report the hourly rate charged by private professional conservators (Question 23). The rates ranged from \$50 to \$125 per hour. The yearly cost was reported from \$300 to \$5,000 per year. The rates appear to be excessive in view of the absence of educational guidelines or licensing requirements. The significance of this is the potential abuse which can occur because non-professional individuals could charge a rate which does not reflect the conservator's competency. This could potentially allow elementary school drop-outs to hang their shingles for business and charge rates customarily reserved for either skilled, licensed or professionally educated individuals.

Twenty-eight percent (28%) of the public guardian respondents believed that private professional conservators are able to provide better more personalized services than public guardians (Question 24). The major reason is the ability of private conservators to visit their clients more often because of smaller caseloads. Caseloads were perceived as being smaller, less demanding, with more money. Other comments suggest that private conservators were more likely to

terminate cases when the money ran out. Fifty-two percent (52%) of the public guardian respondents did not believe private conservators provided better services. The comments suggested that paying for each service does not necessarily mean the service is better. Other respondents stated that private conservators can do a better job because the county offices are overloaded.

The last question related to the range of fiduciary services provided by private professional conservators. (Question 25). Only nine of the respondents knew of other services offered by private conservators. The services included representative payee services, trusts, powers of attorney, managing decedent estates and providing nursing care management.

Conclusion

The questionnaire raises disturbing questions and observations about the Federal Model Standards and its guiding principles.

Ethical Behavior

The ethical principles alluded to in the Federal Model Standards require the conservator to encourage the ward in the appropriate restoration, maintenance, or development of self-

reliance and independence, however, the majority of public guardians reported that the purpose of the conservatorship was to monitor the ongoing care and treatment of the incapacitated individuals. This suggests that perhaps conservatorships are used when the ward is seriously disabled preventing any realistic goal of independence and self-reliance, leaving conservators few options other than monitoring care and treatment.

Guardians should actively pursue the course of action that supports the principle of substitute judgement. Public guardians reported that they actively pursue information from the conservatee regarding preferences on medical care, placement and funeral arrangements. This particular ethical consideration is overwhelmingly followed by public sector guardians. However, when decisions are made on the sale of the principal residence of the conservatee, conservators based their opinion on the likelihood the conservatees are able to return home (45%) rather than seeking the conservatees' wishes (22%).

All conservatees shall be accorded equal procedural protection and safeguards. Public guardians strongly believed that all conservatees had a right to be treated with dignity, the right to privacy, the right to have personal desires, preferences and opinions given due consideration and the right to grieve against the program.

The question of ongoing ethical training for the

conservator is crucial. Unfortunately, the majority of public guardians (61%) reported receiving no training on the fiduciary duty of the conservator to act with honesty and good faith. Where there was training, the most traditional method of providing the training was either through a formal training provided by the public guardian office or provided from a supervisor to a subordinate. The implication is quite serious for the private sector because if training was not readily available for the public sector it is less likely or impossible for the private sector to receive training.

Finally the questionnaire asked public guardians if they believed public conservators were more ethical than private conservators. Forty-nine percent (49%) perceived public guardians as being more ethical than private conservators. Close to 11% of the public guardians thought private conservators were not more ethical, 32% believe ethics were the same, while 8% did not know.

Model Standards

The questionnaire examined ten Federal Model Standards introduced in the U.S. House of Representatives.

Federal Model Standard 1. pointed out the duties of the conservator of the person. The conservator has a duty to see that the conservatee is appropriately housed. The

questionnaire asked how the deputy public guardians determined appropriate housing for conservatees. Forty-seven percent (47%) of the respondents indicated that the deputy public guardians completed their own assessments to determine placement. Licensed clinical staff (28%) and recommendations from physicians (26%) were used by the respondents in making decisions regarding placement.

Federal Model Standard 2. discussed the duties of the conservator of the estate. The conservator has a duty to ensure that all goods and services purchased on behalf of the conservatee are properly delivered or rendered. This is only one of eight responsibilities enumerated under this standard. The majority of public guardian respondents indicated they did not have policies for paying bills. This highlights the importance of financial reviews to ensure the conservatees' assets are not being wasted. One of the limitations of this project is that extensive financial reviews were not asked in the questionnaire nor reviewed in public and private conservators' case files.

Management of real and personal property is another responsibility listed under the duties of the conservator of the estate. The majority of the public guardians (64%) reported their office had written policies on handling the real and personal property belonging to the conservatee.

Standard 4 of the Federal Model Standards suggests the conservator avoid conflict of interest or the appearance of a

conflict of interest. There are two areas where the conservator must exert extreme caution in avoiding a conflict of interest. The first area is to avoid acting as the petitioner on conservatorship applications and the second is receiving compensations for services rendered. The survey reported that most public guardian agencies (60%) had no written policies on who was eligible for conservatorship services. This response suggests that either the public guardians relied upon the statutory language of the Probate Code and/or the public guardian was not the petitioner requesting a conservatorship application. Thus, it is unknown how many public guardians receive cases from other agencies who conduct the conservatorship application investigation.

The second area of examination was the compensation sought by the conservator. Public guardians had policies on fee collection (93%). When a conservatee was unable to pay fees annually, public guardians reported fees were deferred until the conservatorship was terminated, no longer a hardship or waived when there was little or no money in the estate.

Federal Model Standard 5 enumerates the rights of conservatees. The questionnaire asked public guardians about certain civil rights which should be retained by the conservatee. A large percentage (91%-100%) perceived that conservatees have a right to be treated with dignity, retained the right to privacy, have a right to have personal desires, preferences, and opinions given due consideration when making

decisions. These findings strongly suggest that public sector conservators exercise great care in protecting the civil rights of their conservatees.

Federal Model Standard 7 calls for Personal Contact and Ongoing Responsibilities. An element of the Standard dictated that the conservators of the person should have meaningful visits with their conservatees at least once a month whereas the conservators of the estate should have meaningful visits with their conservatees at least once a quarter. While some public guardians reported monthly visits (7%), the majority of the respondents reported that visits were conducted once every three months (53%).

Federal Model Standard 8 discusses the conservators' duty to monitor the conservatees living situations. The questionnaire only asked about placement assessments. The responses indicate that a combination of medical evaluations conducted by licensed personnel and deputy public guardian assessments were the basis for placing conservatees. Furthermore, public sector conservators indicated that they sought their conservatees' wishes on placement (98%). This research project did not address the ongoing monitoring of the conservatees' placement by conducting assessments for active rehabilitation, socialization, environmental, safety, or treatment considerations. Since placement considerations could potentially create the most hardship for the conservatee, more research is needed in this area to determine what type of

placement assessments should be conducted and what actions can be taken to prevent dangerous placement for indigent conservatees.

Securing medical services and obtaining authorization for medical treatment is covered under Federal Model Standard 9. The questionnaire asked about what factors were considered in making medical decisions on behalf of the conservatee. The factors included the wishes the of the conservatee, the advice of the physician and the wishes of the family (41%). Other factors considered when making medical decisions include the best interests of the conservatee, quality of life, diagnosis, age, and the benefits of risk of any medical treatment. In view of the growth of the older adult population, end-life decisions will become more important raising many public policy issues such as allowing persons to reject life-saving treatment, de-criminalizing physician-assisted death, prolonging life by the use of life support systems, and paying for the medical expenses incurred by persons wanting experimental life-saving procedures.

Federal Model Standard 12 established programmatic requirements for guardianship agencies. Under this Standard there are ten areas addressed. The questionnaire looked at only four provisions. There were adequate staffing, training, availability of the program, and fiscal review.

The Federal Model Standards state that the program shall have sufficient number of staff to adequately carry out all

the duties required by statute. Public guardians (73%) perceived there was insufficient staffing to care out their duties. This demonstrates the impact of the severe budgetary constraints imposed upon county programs within the last three years.

Another element calls for professional program staff completing 30 or more hours of orientation training and 8 or more hours of annual continuing education. The curricula for the training shall address the following issues: (1) the consequences of guardianship to the individual, (2) use of the least restrictive alternative doctrine which includes an examination of the legal and social service alternative to guardianship, (3) guardianship statutes and court procedures, (4) the role and duties of the guardian including an examination of ethical considerations, (5) record keeping, (6) administration and review of cases, (7) reporting requirements, (8) public benefits, social services and pre-arranged funeral arrangements, (9) health care, (10) working and communicating with clients, (11) issues related to the specific client populations, ie mentally ill, elderly, (12) case closing, and (13) property management.

Training identified as on-the-job training (42%) was the most prevailing method used by public guardians. Training provided by professional organizations such as the California Association of Public Administrators/Public Guardians was another resource. (23%).

Educational training is an important consideration in having a competent conservator. It would appear that the complexity of subject areas such as government benefits, health care and property management would warrant training in excess of the recommended 30 hour orientation.

Federal Model Standards 12 also discusses availability of the conservator and recommended that the conservator should be available 24 hours a day, seven days a week. The majority of public guardians are available 24 hours a day (74%).

Federal Model Standards 13 discusses fees separately and it suggests that conservators charge reasonable fees to help defray the cost of their services, but should not charge fees against clients when the program already receives funding for services provided. This examination did not query the rate or fees public guardians sought.

Finally, this questionnaire examined some provisions of Federal Model Standard 14 which covers the systematic review of conservatorship cases. The results indicate that most public guardians did not have a systematic internal review of their cases (58%). Some of the respondents who answered this question affirmatively used the court-required accounting as a way of reviewing cases. When examining external review procedures, the majority of public guardian respondents had no external review system (51%). Of the public guardians who reported having an outside review, the county auditors (24%) and grand juries (28%) conducted the review. Other reviews

were conducted by independent auditors (4%), conservatorship advisory committees (4%), patient rights advocates (4%), State Department of Mental Health staff (8%), Department of social services staff (4%), and family members of conservatees (4%).

Court Monitoring

The last section of the questionnaire examined what is occurring in the private sector. The profession of private conservators is a new career where individuals are providing surrogate decision-making services to mentally ill, developmentally disabled, or elderly individuals.

The public sector has had some contact with private professional conservators (68%). Of the 68% having some contact, 53% of the respondents encountered problems with private professional conservators, the most often reported problem being the competency of the conservator (19%), unethical conduct such as fraud, poor service, (14%) and inability of the conservator to carry out his duties because of disability or death (10%). The open-ended comments reflect the lack of educational requirements or ethical standards placed on conservators.

This study did not fully examine what services were provided to the conservatee and the compensation approved by the judge. It should be noted that only a small percentage of public sector conservators reported problems with private

professional conservators. The questionnaires completed by public conservators in urban areas were more likely to have a private professional conducting business in their counties. The number of problems reported by public guardians can be understated since knowledge of these cases were a result of the court appointing the public agency as the successor conservator or the respondent personally sitting in open court and listening to some of the comments. The larger court systems might have the a judicial system where the conservatorship accountings are approved after having the conservator and the probate examiner work out the discrepancies. In order to determine the extent of conservator abuse, a comprehensive study reviewing a larger sample of public and private conservatorship accountings should be explored.

Most public guardian respondents did not believe the court was adequately monitoring the private conservators (57%). The explanations included the court overlooking errors, and the inability of the court to see problems such as unpaid bills, overdrawn bank accounts or receiving financial kickbacks from real estate agents, banks, or other vendors who would provide gifts for the conservator for conducting business. It appears that the court did not monitor the annual accounting reports resulting in a backlog of overdue accountings when the court failed to institute proceedings forcing the conservator to file the accounting. When private

conservators made errors in managing the conservatorship, which came to the attention of the public guardian, the court did penalize the conservators (25%) in a small number of instances. Most public guardians reported that private conservators were not penalized for their errors (51%).

Public guardians perceived that the court held them to a higher standard of care than private professional conservators (53%). Thus, the court, was more likely to penalize a public agency compared with a private agency or individual.

Overall, it appeared some courts were trying to monitor the performance of all the conservators, however, some of the problems identified by public guardians could be items not presented to the court. One method of addressing this problem is to allow the court the ability to appoint auditors to perform financial audits of conservators records. Additional financial resources would need to be allocated to superior court to pay for this service.

CHAPTER VIII

Case Study: John Cody, El Dorado Public Guardian Terence Loughran, Private Professional Conservator

After the survey was completed, another questionnaire was developed to examine if there were in fact any differences serving clients between public and private conservators. Client care, compliance with legal requirements and conservators compensation were examined. This evaluation was conducted to examine the actual practices related to the Federal Model Standards. The El Dorado County Public Guardian's Office was selected for study. This program is one of the smallest programs in the State and may not be typical of larger conservatorship agencies.

The El Dorado Public Guardian was John Cody. In addition to his public guardian responsibility, Cody was the County Veteran Service Officer and the Representative Payee. This seven person office consisted of the elected official, the assistant public guardian, two deputy public guardians who had been recently hired, a clerical assistant and two accounting clerks. It is important to note that the deputy public guardian positions had been vacant for a least five months. Cody reported his overall caseload was 134.

Methodology

Model Guardianship standards were reviewed to determine standards which are specifically related to client care, compliance with legal requirements and compensation. A check list was developed to look at tasks specifically related to client care, compliance with legal requirements and compensation.

Cody and Mr. Castleman, the assistant public guardian, were interviewed. Winnie Vaught, a retired Deputy Public Guardian and Shirley Rowe, a senior account clerk were available to answer questions. Eleven case files were reviewed, however only 7 of the cases were probate conservatorship cases. The remaining four cases were mental health conservatorship. The cases were selected by Vaught at the request of the author who asked for cases which contained at least one of the following criteria: (a) cases were six months old, (b) cases were 2 years old having only cash, (c) cases in excess of 2 years having real and personal property, (d) a case that was recently closed, and (e) a case that has been closed for over 6 months.

Neither Cody nor Castleman were asked about their educational background so it would be difficult to make a comparison with the private professional conservator as to education and experience background. The California State Association of Public Administrators and Public Guardians

recommend that deputy public guardians minimally possess a Bachelor's degree. It is quite possible that job descriptions for deputy public guardians require experience in lieu of college education. Further study should be conducted to determine the appropriate educational and experience for deputy conservators.

The private professional conservator who agreed to participate in this study was Mr. Terence Loughran, a private professional conservator registered in Riverside County. He may not be the typical profile of private professional conservators. Loughran reported that he is an ex-priest and had been a professor of theology. This might indicate higher ethical values. His experience included working with Area Offices on Aging and at one time he was the director of the Office of Aging in Riverside County. He has a master of arts in theology and completed doctoral work in liturgy. He currently has a caseload of fifteen (15) probate conservatorship cases. He does not manage any mental health conservatorship cases but does handle brain damaged individuals. He was not asked if he belonged to any professional conservatorship association. He is not listed in the National Guardianship Association Rooster for either 1993 or 1994.

Loughran indicated that he had a contract with a local acute hospital to establish conservatorships for individuals who had no family or friends who needed to be conserved

according to medical recommendations. The contract would compensate him and his attorney for filing the conservatorship and managing the estate. If the conservatorship estate was able to afford the services, the conservator would request court authorization to refund the acute hospital. The contract was disclosed to the judge at the time the court accounting was presented. After learning of the judge's opposition to hospital contracts, the conservator terminated his contract.

In order to conduct this study three conservatorship cases were reviewed.

Conservatorship Standards

Client Care

Conservatorship established pursuant to the Probate Code promote the legislative intent to: (a) Protect the rights of persons who are placed under conservatorship; (b) Provide an assessment of the needs of the person in order to determine the appropriateness and extent of a conservatorship and to set goals for increasing the conservatee's functional abilities to whatever extent possible; (c) Provide that the health and psychosocial needs of the conservatee are met; (d) Provide that community-based services are used to the greatest extent in order to allow the conservatee to remain as independent as in the least restrictive setting as possible; (e) Provide that the periodic review of the conservatorship by the court investigator shall consider the best interests of the conservatee; (f) Ensure that the conservatee's basic needs for physical health, food, clothing, and shelter are met; and (g) Provide for the proper management and protection of the conservatee's real and personal property. (Probate Code 1800)

Assessment

The first area examined was the area of client assessment on the probate client. One area of potential fiduciary abuse is the inappropriate establishment of a conservatorship since the granting of such a conservatorship order will deny a person's basic rights such as deciding where to live, restraint from movement, inability to refuse medical treatment, and inability to receive and spend his/her own money.

Least Restrictive Imposition

The second area examined was the imposition of restrictive measures placed upon the client. The philosophy of least restrictive imposition of legal disabilities should be followed. This means the conservator should only ask for those powers necessary to address the needs of the clients. It also requires the conservator to place patients in the least restrictive placement for their care. Fiduciary abuse would embrace taking too many rights from patients unnecessarily or placing the patients in a more restrictive placement than is necessary for their care and well-being. Probate conservators are legally prohibited from placing clients into mental health treatment facilities against their will, consenting to electro-convulsive treatment and

consenting to the use of experimental drugs.

Provision for Care

The third area examined was the conservator responsibility to ensure the clients' needs for physical health, food, clothing and shelter are being met. Failure to provide for these basic needs would be fiduciary breach.

El Dorado Public Guardian

Client Care Findings

The Public Guardian conducts his own investigation to determine if a person meets the legal criteria for establishing a conservatorship. He is currently the conservator for 81 clients.

1. The Public Guardian does not prepare a formal investigation document to use as a guideline in establishing a conservatorship. There were notes in the case files which indicated general demographic material such as name, social security number, date of birth, address. When the Public Guardian decides that a case is appropriate a letter is sent to county counsel providing information indicating reasons why a conservatorship is necessary.
2. The Public Guardian has a fact sheet for probate conservatorship applications. The fact sheet provides all the information necessary to file a petition for conservatorship such as limitation of powers and duties for the conservator, ability to give informed medical consent, jurisdiction, residency, character and value of the property of the estate and relatives.
3. There was no written information/documentation regarding

an examination into alternatives to conservatorship nor discussion from family members as to whether the family member wished to pursue a conservatorship.

4. There was no ongoing documentation of client contact in the case file or reports indicating the care, observations of visitations or progress notes. The Public Guardian implemented a ongoing client contact report which is now being completed by the deputies.
5. Of the case files reviewed only one investigation letter contained information on the client's general assessment which would sustain a conservatorship of the person. The case file had no other information relating to the client's functional abilities. This would suggest the investigation sought only to justify the conservatorship but fails to describe the clients current abilities and preferences. In other cases, the case documentation failed to disclose the necessity of the conservatorship.
6. The Public Guardian requests independent powers on all the Probate Conservatorship cases sought. The Court granted each request allowing the conservator a broad range of powers to administer the case.

7. In order for the conservator to give informed medical consent on behalf of the conservatee the conservator must obtain a medical declaration from a physician indicating the conservatee lacked the capacity to give informed consent. This declaration is the basis for the judge granting the conservator the right to make medical decisions. The El Dorado Public Guardian appropriately sought and obtained medical declarations for conservatees who were mentally disabled.
8. The case file did not reflect any information as to the rationale of the client placement. The case contact sheet could be used to describe the patient's functioning and the need for a particular level of care.
9. The Court is not notified when a client is moved from one location to another. While this is required by State law, the El Dorado Court system may not require this information.
10. It did not appear from the cases reviewed that spending money and clothing money was sent regularly. Part of the problem in detecting this information is that only two client ledgers were reviewed and one El Dorado Court accounting document was available.

11. The Public Guardian attempts to secure medical and dental care for his clients. The challenge will be more critical because of the reluctance of providers to accept medical payment.
12. The Public Guardian indicated he tries to determine the preferences of the client for medical, financial and burial decisions. However, of the cases reviewed, there was no documentation in case files to indicate what, if known, were the preferences.

Terence Loughran: Private Conservator

Client Care Findings

1. The case file did not disclose written evidence of a functional assessment, however, the conservator was verbally able to describe the conservatee and his functional abilities such as dressing, walking, cooking, and feeding.
2. The conservator did not initiate conservatorship as a result of his own case finding. One of the conservatorship cases was referred to him from a social worker associated with the Masonic Homes. The social worker was concerned about the proposed conservatee's vulnerability to financial exploitation. Another case was referred to Mr. Loughran from a discharge planner at an acute care facility and the final case was referred by family members.
3. The conservator said other alternatives such as voluntary case management services, payee services and securing a general power of attorney were examined, but the file did not disclose any written documentation.

4. Family members were consulted prior to the conservatorship applications according to the conservator. The case file reflects the name, address and telephone numbers of relatives.
5. The conservatorship application on two of the cases reflected that the proposed conservatee petitioned for the conservatorship by signing the actual court petition. The conservatee also signed a nomination which was attached to the petition.
6. The general plan was filed on time in two cases. The general plan on the third case was one month late.
7. According to the conservator, the treating doctor always recommends the level of care the conservatee requires. This information was always given to the conservator verbally either when the conservatee was in the hospital or when the conservatee visited the doctor. The case file disclosed no actual documentation from the treating doctor of the placement recommendation.
8. The case accounting files disclosed that personal needs and clothing were provided on a regular basis.

9. The conservator strives to provide personal services to the conservatee. The conservator was able to provide thorough information about the conservatee's current living situation, concerns raised by the conservatee, and overall medical and mental health status. However, there was no case documentation which would reflect the ongoing contacts other than information needed for billing information.
10. The conservator reported that the conservatee's preferences were always sought regarding medical care, placement and burial arrangement. In those cases when the conservatee was unable to express his preferences, family members were contacted to determine what the conservatee's preferences were if known by the family. The case file disclosed no written documentation about the conservatee's preferences.
11. The conservator is aware of the prohibition against placing a conservatee in mental health treatment facilities or consenting to psychotropic medication.
12. There was no ongoing case documentation regarding the conservator's visits or telephone calls to his ward. Some of the visitation was captured on the billing at the time of the annual accounting.

13. The conservator did not seek many independent powers at the onset of the conservatorship. He only sought independent powers when he needed them.
14. The case files indicated that the Riverside Superior Court was notified on a change of residence on one case. Two of the three cases indicated the patient moved to new placements. The conservator reported that anytime the conservatee moved, the attorney of record was notified so that appropriate legal notices were given. However, the attorney failed to follow through on the notification on one case and the conservator failed to check the actions of his lawyer.
15. The conservatorship applications included medical declarations on the conservatee's capacity to give informed medical consent. When the conservatee lacked capacity to give informed medical consent the conservator sought medical powers.
16. The conservator reported that his attorney required medical documentation on placement for all temporary conservatorship applications.
17. The conservator was asked what would happen to his conservatorship cases in the event of sudden death. The

conservator indicated he was concerned about this possibility and believed it was a serious problem for a sole practitioner. One option was to name the Public Guardian as an alternate conservator.

18. Mr. Loughran was asked about his ethical responsibility to his wards. He indicated that he was responsible for doing his best not to curtail freedom, promote full life for the ward, to respect the conservatee. He stated that in terms of handling the estate, your ethical responsibility requires sheer honesty since it is quite easy to "rob the estate blind."

Legal Requirements on Conservatorship Administration

The Probate Code provides for the removal of a conservator for cause. A conservator could be removed for failure to file an inventory and appraisal, submit a general plan and failure to file an annual accounting. Conservators should abide by the legal provisions to meet deadlines rather than risk the possibility of removal.

General Plan

The Probate Code requires the conservator to file a general plan outlining what the conservator plans to do with the conservatorship estate ninety (90) days after appointment. There is no penalty for failure to file a general plan, however the court can issue an order to show cause as to why a general plan was not filed.

Probate Code 1831 " All conservators shall file a general plan with the court within 90 days of appointment detailing how the personal and financial needs of the conservatee will be met. A copy of the plan shall be provided to the court investigator, and notice of the filing of the general plan shall be given to those persons who have been given notice of the petition. The general plan may be reviewed by those person who have been given notice of the petition and who request to review the general plan. The court may schedule a hearing on the general plan if the court determines that a hearing would serve the best interests of the conservatee or if objections to the plan are submitted to the court within 30 days after the mailing of the notice of filing. "

Inventory and Appraisal

All conservators are required to file an Inventory and Appraisal of the estate within 90 days after appointment or within further time the court allows the conservator to file the inventory upon an ex parte petition. Failure to file the Inventory and Appraisal within these time lines is cause for removing the conservator. Additionally, if there are any damages the estate incurs for failure to file the inventory and appraisal, the conservator may be held liable.

Probate Code 2610: "(a) Within 90 days after appointment, or within such further time as the court for reasonable cause upon ex parte petition of the guardian or conservator may allow, the guardian or conservator shall file with the clerk of the court an inventory and appraisal of the estate, made as of the date of appointment of the guardian or conservator."

Probate Code 2614.5: "(b) If the guardian or conservator fails to file the inventory and appraisal as required by the order within the time prescribed in the order, unless good cause is shown for not doing so the court, on its own motion or on petition, may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly, and order the guardian or conservator to file an account and to surrender the estate to the person legally entitled thereto."

Probate Code Section 2615: " If a guardian or conservator fails to file any inventory required by this article within the time prescribed by law or by court order, the guardian or conservator is liable for damages for any injury to the estate, or to any interested person, directly resulting from the failure timely to file the inventory. Damages awarded pursuant to this section are a personal liability of the guardian or conservator and a liability on the bond, if any."

Accounts

The conservator can also be removed for failure to file the account on a timely basis. The court will provide a citation to the conservator for failure to file the account and provide a deadline. If the deadline is missed, the court could remove the conservator for cause.

Probate Code 2620: "(a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court, the guardian or conservator shall present the account of the guardian or conservator to the court for settlement and allowance."

Probate Code 2620.2: "(c) If the conservator does not file an account and set the account for hearing as required by Section 2620 after having been cited under subdivision (b), the conservator may be punished for contempt or removed as conservator, or both, in the discretion of the court."

Accounts upon Termination

Upon the death or termination of the conservatee, the conservator has very limited powers. The conservator should make every effort to pay all the expenses incurred during the period of conservatorship, pay the expenses of final illness and funeral. After all expenses are paid the conservator should prepare and file the final account. After the final account is approved all the assets belonging to the estate are distributed on a timely basis so that the case is closed (Probate Code Section 1860 and 2631).

El Dorado Public Guardian

Legal Requirements on Conservatorship Administration

Findings

1. There were three probate conservatorship cases reviewed where appointment occurred after July 1, 1991. None of the general plans were filed on time.
2. There were eleven cases reviewed representing both LPS and Probate Conservatorship. One case was a successor conservatorship case which does not require an inventory and appraisal. The inventory and appraisals were not filed on time on any case.
3. There were eleven cases representing both LPS and Probate Conservatorship cases. Of the eleven cases six (6) did not require an accounting. The remaining five (5) cases had accounting which were filed past the deadlines set by the Probate Code.
4. There was only one case reviewed where a termination of the conservatorship occurred. In this case it appeared the closure of the case was completed within a reasonable time.
5. The court did not issue any order to show cause on any of

the late inventory and appraisals, general plans, or court accounting.

Terence Loughran: Private Conservator

Legal Requirements on Conservatorship Administration

Findings

1. The inventory and appraisal was filed on time in two cases. The third case was filed one month late.
2. The general plan was filed on time on one case and was late on the second case. The general plan was not due on the third case.
3. The Riverside Superior Court did not issue any order to show causes on the late inventory and appraisal or general plan. Since the late documents were only one month late the court did not file OSC's because the records were not significantly delinquent.
4. The accounting was not due on two cases. Where the accounting was due, the accounting was filed on time.

Compensation to Conservators

Conservators are entitled to fees for the services they render. The conservator can petition the court for periodic fees after the inventory and appraisal has been filed. If periodic fees are granted, the conservator may collect his fees on a monthly basis. The conservator usually requests fees at the time the court account is presented to the court. The conservator is not allowed to collect any fees until there is a court order to do so.

Probate Code 2640: " (a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following: (1) The guardian or conservator of the estate for services rendered in that capacity to that time. (2) The guardian or conservator of the person for services rendered in that capacity for that time....(1) the court shall make an order allowing such compensation requested in the petition as the court determines is just and reasonable to the guardian or conservator of the estate for services rendered in that capacity or to the guardian or conservator of the person for services rendered in that capacity, or to both.."

Public guardians are allowed to receive reimbursement for their official bond. The conservator without court authority can collect a bond fee on all non - Supplemental Security Income clients. The minimum collection is \$25.00 per year.
(Probate Code Section 2942)

El Dorado Public Guardian

Compenssation to Conservator Findings

1. The Public Guardian seeks and receives fees on Probate Conservatorship cases. He does not petition for fees on the LPS cases.
2. The Public Guardian collected his fees only after the court approved his compensation request.
3. The Public Guardian does not seek periodic fees on any of his cases.
4. The fees are set by the Board of Supervisors. The current rate is \$15.00 an hour. This amount appears to be low in view of his current expenses.
5. The conservator indicated that in cases where there was very little money he secured a general power of attorney to manage the estate thus avoiding conservatorship. When there is very little money in estate the conservator could not afford the services of an attorney or payment of the Court expenses.

Terence Loughran: Private Conservator

Compensation to Conservator Findings

1. The conservator kept time records of his time. At the time of the accounting an itemized listing of services was submitted. The delineation included the date the service was rendered, the activity, and the amount of time billed.
2. The conservator retained the services of a bookkeeper to track banking activities and pay the bills. The charges were quite modest and the one accounting where the conservator was compensated, the bookkeeping charges was \$25.00 a month. The conservator charged \$75.00 to complete the inventory and appraisal and \$50.00 to complete the court accounting.
3. The conservator reported he never asked for periodic fees. He only sought reimbursement at the time of the annual accounting.
4. The conservator indicated that the rate he sought, \$60.00 an hour, was the customary fee allowed conservators in Riverside County. In the one case he asked for fees the total compensation was \$2,700 for a year.
5. The conservator was asked to estimate, on the average,

how much time he spent annually managing a conservatorship estate. Mr. Loughran reported that he reviewed some of his cases and it appeared he averaged 78 hours a year. He went on further to state that a caseload for a sole practitioner was about 20 cases.

Conclusion

The findings for both the public and private sector conservatorship programs provide some general conclusions relating to the Federal Model Standards.

Client care provisions

The Federal Model Standards 1 relates to the duties of the conservator of the person. The duties require that the conservator provide for the support, care, comfort, health and maintenance of the ward. Furthermore, this duty requires the conservator to secure medical, psychological, and social services, train, and educate the ward.

Both the private and public conservators took active steps to ensure the ward was evaluated for mental capacity to give medical consents. In cases where the ward lacked the capacity to give informed consent the conservators sought and obtained authority to consent for medical treatment on behalf of the ward.

The conservator in both the public and private sector ensured their wards received medical and dental care. The private conservator indicated he made an effort to work with the ward's existing doctor or health maintenance organization (HMO). The public conservator indicated he made a strong effort to ensure his wards received medical and dental care

especially for indigent clients but he did not specify if he made special efforts to maintain the wards personal physician.

Personal needs allowance, and clothing payments were made by the conservators. It would appear that in the provision of support, care, comfort, securing medical, psychological and social services the service was identical between the public and private sector.

Duties of the estate: filing court reports

Federal Model Standard 2 delineates the duties of the conservator of the estate. The conservator has a duty to timely file an inventory of the conservatee's assets, the court accounting and any other report required by the court. In California, the conservator must file an inventory and appraisal, general plan, court accounting, status report, and notification to the court when the conservatee is moved.

The private and public conservator filed all the court documents, however, the private conservator completed the reports in timely fashion as opposed to the public conservator who filed all the reports late. When it came to notifying the court as to when the conservatee moved, the public conservator never notified the court and the private conservator notified the court in one of the three cases reviewed. The private conservator indicated that he had notified his attorney of the move however the attorney was not filing the appropriate

notification in court. The public conservator responded that neither counsel or the court required the notification as to the whereabouts of the conservatee.

Preservation of civil rights

Federal Model Standard 4 addresses the civil rights of the conservatee. Under this concept a conservatee has the right to guardianship services suited to his/her condition. Along with this provision, a conservatee also has the right to have personal desires, preferences, and opinions given due consideration.

One way of looking at this principle is to examine if conservators conducted an assessment to determine if a conservatorship was necessary, if a conservatorship was necessary what independent powers were granted to the conservator, and what consideration was given to the conservatee's preferences.

Both the public and private conservators had no written case documentation regarding a functional assessment on the conservatee's disability. The private conservator said he never pursued a conservatorship unless a doctor had indicated the conservatee was incapacitated. It was interesting to note that in two petitions filed by the private conservator, the petition failed to substantiate the necessity of the conservatorship of either the person and estate. Instead, the

proposed conservatee executed nominations and signed the conservatorship application petitions. The private conservator explained he examined alternatives such as representative payee services and powers of attorney. The public conservator, in this case also administered a representative payee program, and verbally explained he would use the payee program if it was appropriate. However, in both cases, neither conservator had written case file documentation as to the rationale about not using any of the alternatives.

Preferences expressed by the conservatee were sought and followed by conservators. Both the public and private conservators were able to verbally explain the wishes of the conservatee regarding medical care, living arrangements and burial plans. The case files, however, failed to document those wishes. So as long as the conservator remained active on the case the preferences were followed. Significant problems would occur if something happened to the conservator such as a long illness or death. In the case of the public conservator, other employees knew the wards and could follow the conservatee's wishes; however in the private sector in cases where the conservator was a sole practitioner this can pose a serious problem.

The conservator could seek certain independent powers to manage the estate of conservatee if it would be to the advantage, benefit and best interest of the estate to do so. The conservator must petition the court for independent

powers. In granting these independent powers the court is to consider the circumstances of the particular case, the need for the grant of the power, and the qualifications of the guardian, and the expense of obtaining court authorization for each exercise of the power requested if the petition filed is denied. Some of these independent powers include: powers to contract, purchase and sell real and personal property, purchase, sell, and exercise stock options, operating businesses owned by the conservatee, exchange property, lending estate money, pay collect or compromise debts to the estate, and the power to employ attorneys, accountants, investment counsel, employees and pay for those expenses.

The public conservator, upon advice of his counsel, sought and obtained a full array of independent powers. On the other hand the private conservator only sought those independent powers he felt necessary to administer the estate.

Monitoring placement

Federal Model Standard 7 highlights the personal contact and ongoing responsibility of the conservator. The cornerstone of this standard requires the conservator of the person to have meaningful visits with the conservatee at least once a month, or in the situation with a conservator of the estate a meaningful visit once every three months. The conservator should have a written summary of all written

contacts with the conservatee and should describe the date and approximate time of the contact, the reason for the contact, the nature of the contact and the outcome of the contact. Finally the conservator of the person has a duty to monitor the living situation

The private conservator reported that he visited his conservatees once a month and more often depending upon the needs of the conservatee. The public conservator reported that visits were scheduled according to the conservatee placement. When the conservatee lived in licensed placements such as board and care homes or skilled nursing facilities visitation occurs at least once every three months. However, if the conservatee lived independently, visitation occurred more frequently and averaged at least once a week.

Both the private and public conservator had some written documentation in the file. The notes, when they existed, outlined the date and a brief description of the outcome. The private conservator said he kept notes as to the length of the visit for billing purposes, but this information was not readily available for review.

Placement assessments as to the appropriate placement were completed by a physician in the case of the private conservator. The public conservator reported that medical treatment staff was consulted when decisions were made on placement. However, both the public and private conservator had little written documentation regarding the justification

for the placement.

Compensation for conservators

Federal Model Standard 13 discusses fees for the conservator. The standard recommends that a conservatorship program may charge reasonable fees to help defray the cost of its services. However, no fees may be assessed against clients for whom the program already receives funding for services provided. Fees should not be paid from the personal allowance permitted under certain public benefits programs. The fee charged must take into consideration the ability of the client to pay and in no event may a fee be taken from a client with an annual income at or below the current federal poverty level. Furthermore, absent the rendition of extraordinary services, fees shall not exceed 5% of the ward's income.

The public conservator program was funded through general County funds. Any fees he collected were established by the El Dorado County Board of Supervisors and were just reimbursement for services rendered. When the estate had insufficient funding to reimburse the County for the full cost of services, the public conservator only asked for a small fee and deferred full collection until the final accounting. In the event the estate was unable to pay the cost, the fees were waived.

The private conservator had no other source of income than the estate of the conservatee. The private conservator set his rate according to the customary rate granted by the local Court. In this case, private professional conservators in Riverside County received fees in the amount of \$60.00 per hour. The private conservator tracked his hours and charged the estate according to the hours billed. If the estate had insufficient funds to pay the cost of service the conservator reduced or waived his fee. The conservator indicated that on the average he provided 78 hours of service each year to his conservatee. While the study did not examine the estate values of the private conservators, it would appear if one followed the Federal Model Standards the income from the estate must be at least \$93,600 a year. This would imply only extremely wealthy estates would be able to afford the services of private conservators.

In reviewing the overall performance of the public and private conservators it appears they performed equally in monitoring the personal care of the conservatees as far as their oral explanations. Its important to note that both the public and private conservators case files were poor in documenting the conservatees personal care and progress. This made it quite difficult to authenticate if meaningful visits occurred.

The private conservator performed substantially better than the public conservator in meeting the legal requirements

of the conservatorship. The private conservator was more selective in removing civil rights than the public conservator. In this particular area the role of the attorney for the conservator can't be overlooked. Clearly, the public conservator in this case was at a disadvantage because there is no clear attorney-client relationship.

Finally, in the area of compensation, the conservatee was charged substantially less by the public conservator. The hourly rate of \$15.00 was quite modest compared to the \$60.00 an hour rate. It would appear that if the taxpayer wished to pay more for the service and adequately staff public conservatorship programs, personal attention could be given to the conservatee. The private conservator's rate suggests that this is an expensive service to render. In order to make a living from being a private professional conservator, the conservatorship estate must bear the entire cost of service and the professional must have a substantial number of cases.

It should be recalled, however, that the private conservator examined in this case was an ex-priest with post-graduate theological training. In terms of ethics, he may not be representative of all private conservators.

CHAPTER IX

Conservatorship practice

The goal of this research project was three-fold. The first goal was to examine specific conservatorship standards and practices related to training, philosophy and areas of inherent conflict of interest issues against Federal Model Standards. The second goal was to identify certain key Federal Model Standards and determine how a public and private sector conservator complied with those standards in practice. The third goal was to determine if judicial monitoring was effective in monitoring a conservator's performance.

Overview

Older Americans will comprise a larger percentage of the future population. This population, taken in concert with disabled Americans either through development or mental disabilities, poses an overall federal and state question as to how to provide surrogate decision-making to incapacitated individuals. The first question to ask is does our society have an obligation to care for the disabled? It appears that given the development of the Probate Uniform Probate Code and state probate laws, legislatures do believe this is a role of government. This protective paternal philosophy is found in

the protection of the assets of the disabled which can be extrapolated to the prevention of elder abuse. The second question is what level of government should be responsible for guardianship standards. There has been some activity in promoting Federal Guardianship standards which have not been adopted. It would appear that certain United States Constitutional areas such as protection of civil rights, and prohibition against loss of liberty, gives credence that some Federal guidelines could be adopted with the state government taking the overall responsibility of administering the program. Surrogate decision-makers have a definite role in consenting to medical treatment, placement, and estate management for the incapacitated individual. The federal government already, to some extent, allows surrogate decision-making for estate management when allowances are made for representative payee for Social Security recipients. There is no denying the need for this type of service because the demand will be greater in the future.

Conservators Ethics and Practices

The questionnaire administered to California Public Guardians examined areas such as ethical training, competency of conservators, and adherence to Federal Model Standards such as the duty of the conservator of the person, duties of the conservator of the estate, avoidance of a conflict of

interest, fees, personal contact and ongoing responsibilities, and program requirements.

The California public guardians, according to their own estimates, administer collectively, close to 15,000 cases. Since California has the largest public conservatorship program in the country, their comments provide an unusual insight into guardianship practices and goals.

The ethical responsibilities of guardians are not clearly defined. Concepts such as honesty and trustworthiness are followed in estate management practice because of internal policies related to asset management evidenced by policies on handling real and personal properties; however, nothing is in place regarding direct honesty and truthfulness to the ward. Ethical training is clearly lacking among most public guardian agencies. The significance is that an overall ethical framework is missing when conservators make decisions for conservatees. If this problem is identified in the public sector the implication is that an even larger problem exists in the private sector since there are no licensing agencies providing any professional oversight.

The Federal Model Standards promote the concept that the goal for a conservator is to promote independence and self-determination for the conservatees. Yet, for public guardians, a large percentage believed the purpose of a conservatorship was to monitor the ongoing care and treatment of incapacitated individuals. This would suggest that in cases where the

conservatee is most incapacitated, considerations such as humane care and alleviation from pain should be examined and perhaps adopted as goals.

Conservator competency was examined in several areas such as how training is provided, what type of training conservators should have, and what complexities of personal and estate management conservators face. Earlier in this paper several areas were introduced regarding competency. The Statement of Recommended Judicial Practices recognized that the duties of guardians for elderly wards are broad and demanding. Conservators can be faced with issues dealing with housing, long term care, financial, medical and legal problems. In addition to being able to deal with a broad variety of issues, conservators must have knowledge on the functional ability of conservatees, visitation of conservatees, protection and preservation of estates, advocacy, adequate living arrangements, and quality-of-life issues. At the same time, the proposed Federal Guardianship Rights Act suggested that guardians receive training related to the fiduciary duties of the guardian, the aging process, the availability of social and health services, the least restrictive alternative doctrine, and financial accounting and reporting to the court. Finally, the Federal Model Standards recommended conservators should have successfully completed 30 or more hours of orientation training, and 8 hours annually of continuing education covering such issues as:

- * consequences of guardianship to the individual,
- * use of the least restrictive alternative doctrine,
- * guardianship statutes and court procedures,
- * role and duties of conservators which include ethical considerations,
- * record keeping,
- * administration and review of cases,
- * public benefits,
- * social services,
- * pre-arranged funeral arrangements,
- * health care,
- * working and communicating with the conservatee,
- * property management,
- * case closing.

All these references are correct in the knowledge conservators must have to competently manage conservatorship estates. Basic knowledge of these areas help conservators recognize an issue and use a framework when making a decision.

The basic problem facing conservators is the lack of formalized training on how to be a conservator. Public guardians learned the duties of a fiduciary from an experienced member of the agency. It was quite helpful to have written policies and procedures to guide the staff but it was invaluable having a person available to ask questions regarding the administration of the estate. This again poses significant problems in the public or private sector when

there is no licensing or certification process. If a public or private professional conservator is a small agency or sole practitioner this problem can be further complicated by the fact the conservator may not identify issues, and has no one to ask.

Summary

The Federal Model Standards provided guiding principles similar to the ethical duties of the conservator. Ethical conduct for conservators, such as exercising extreme care and diligence when making decisions on behalf of the conservatee in the manner which protects the civil rights and liberties of the conservatee, exhibiting the highest degree of trust, loyalty, and fidelity in relationship to the conservatee, providing competent management of the property and income of the conservatee are unknown to most public and private conservators. Guardian training is provided by an experienced fiduciary to a less experienced associate. The lack of specialized training as well, as clear guidelines for specific education courses for fiduciaries, presents a serious problem. Further research and guidelines are needed in this area.

In order to address these areas, the first action is to establish an ethical practice statement for both the public and private sectors. Since this study found that ethical training is usually provided by professional organizations,

efforts should be made by professional guardianship associations to develop an ethical practice statement and have its membership sign such a document. The National Guardianship Association has already adopted ethical standards for guardians but should have their membership sign a statement promising compliance of those standards. The California Association of Public Administrators/ Public Guardians also have a section in their certification process on ethical standards. The California Association should require their membership to sign a statement indicating compliance with those standards.

In the case of California public guardianship agencies, the managers of such agencies should develop ethical statements and require deputy conservators to execute such a form.

More attention must be given to the educational and experience requirements for a conservator as well as a formal licensing or certification system. While the Federal Model Standards lists areas where the conservator should be trained, certain topics should be identified as basic requirements to operate as a fiduciary. Consideration should be given to such topics as:

- * banking regulations and practices related to accounts,
- * elements of a contract,
- * business law,
- * general purchasing concepts,

- * general principles of real property,
- * financing real property,
- * taxation principles to review income tax documents,
- * trusts,
- * basic principles of investments.

Conservators Practices vs Federal Model Standards

The second goal of this research project is to identify certain Federal Model Standards and determine how the public and private sector complied with those standards. A combination of the questionnaire results and the second research method was combined to obtain an overall result.

Federal Model Standard 1: Duties of the Guardian of the Person

The duties of the conservator of the person require the conservator to see that the conservatee is appropriately housed, ensure provisions are made for the support, care, comfort, health and maintenance of the ward, make reasonable efforts to secure the conservatee medical, psychological and social services, training, education, and social and vocational opportunities.

According to the questionnaire results, public guardians determined placement either by their own assessment, or, to a

lesser extent recommendations from licensed clinical staff or physicians. When case files were reviewed for the one private and one public conservator, there was no assessment documentation, although both the private and public conservator were verbally able to describe the functional condition of the conservatee which warranted the placement. Poor documentation creates a serious problem in ascertaining whether a placement was actually necessary. As the old axiom says, "If it ain't written down, it didn't happen!"

The conservator should ensure the conservatee has adequate clothing and personal needs allowance. In reviewing the court accounting documents for the public and private conservator, money was sent to the conservatee or to a store for clothing and personal items purchases. The private conservator indicated that he individually evaluated the needs of the conservatee regarding personal needs allowance. Often, money accumulated in the facility patient trust account because the client was frugal and chose not to spend any money. At other times, giving personal needs money to the client only caused problems, and an example was cited of a diabetic conservatee who would spend his personal needs money purchasing candy through the facility vending machines. When the conservatee ate too much candy his health was adversely affected. In order to deal with this problem he limited personal needs allowance, only to be challenged by the conservatee's attorney who sought, and obtained, a court order

forcing the conservator to send a certain amount of cash to the conservatee.

Federal Model Standards 1 suggest the conservator make reasonable efforts to secure medical, psychological, social services, training, education and social and vocational opportunities. The case studies revealed that conservatees medical, psychological and social services needs were addressed. Training, educational and vocational opportunities were not needed or desirable goals for the frail older adults. It would appear the goals should be aimed at activities the client needs and wishes to pursue.

Federal Model Standard 2: Duties of the Guardian of the Estate

Federal Model Standard 2 addresses the duties of the guardian of the estate. Listed under this particular duty is the responsibility of acting as the fiduciary of the ward performing duties responsibly and honestly for the benefit of the ward, keeping accurate records of all payments, receipts, and financial transactions, ensuring that all goods and services purchased on behalf of the ward are properly delivered and rendered, allowing the ward the opportunity to manage funds as appropriate, posting and maintaining a bond, complying with requirements of the court, including the duty to file an inventory of the ward's assets, and the duty to

file an accounting and other reports.

The questionnaire administered to public guardians revealed that public guardians had written policies on managing real and personal property and to a lesser extent some public guardians reported having policies related to paying bills.

While this study did not address a comprehensive financial review of the public and private conservator, it appears more attention should be directed at establishing financial guidelines related to handling personal property, purchasing practices, making good tax decisions and estate planning. Earlier in this paper examples of fiduciary abuses were introduced such as stealing property from the conservatee, influencing estate planning decisions, or making errors in estate management. Certainly, the management of a larger guardianship agency requires more internal controls in handling cash, checks, and valuable personal property than required for a sole practitioner. However, operating a sole proprietorship to handle fiduciary accounts can subject the conservatee to greater financial risk, since the integrity and honesty of the conservator is not questioned and financial audits are not conducted.

The private conservator did a much better job than the public conservator in complying with filing required court documents such as the inventory and court accounting. Since the attorney of record is responsible for filing court

documents the role of the attorney can not be overlooked. The private conservator is represented by a private attorney as opposed to the public conservator who must rely upon the services of County Counsel. Typically County Counsel will assign an attorney to represent the public conservator and this representation may not truly represent a typical attorney-client relationship.

Federal Model Standard 4: Avoidance of Conflict of Interest

Federal Model Standard 4 covers the avoidance of conflict of interest. Under this standard the guardian shall avoid all conflicts of interest and even the appearance of a conflict of interest. Examples include the avoidance of providing housing, medical or social services to the conservatee. Therefore, it would be improper for a conservator to have an ownership interest in a convalescent hospital or board and care facility in which a conservatee is placed. The engagement of friends or family for services in accounting, taxes, investments, etc should be avoided. The court would unlikely have knowledge of such a relationship.

The conservator or the agency providing conservatorship services should not act as the petitioner in a guardianship procedure. This issue relates to the possibility of conservators inappropriately establishing conservatorships, thus potentially enriching their own pockets.

Conservators should not commingle personal or program funds with the funds of the conservatee, conservators should not sell, transfer, convey or encumber any interest in real or personal property to their staff unless such transactions are approved by the court after notice to interested parties, and the conservators should not borrow funds from, or lend funds to wards.

The public guardian questionnaire revealed that the majority of the respondents did not have written guidelines on who is eligible for conservatorship services. The questionnaire did not ask public guardian respondents if the public guardian agencies conducted their own investigation for conservatorship applications, however, some of the respondents indicated they received the case after an investigation was completed by another county department.

In the case of the public conservator and the private conservator evaluation, the public conservator conducted his own investigation and instructed his counsel to file a guardianship application. The private conservator, in the cases reviewed, only sought a conservatorship based upon a recommendation from a physician. The conservatorship application did not justify the necessity of the conservatorship but was signed by the conservatee. The conservator reported that information to justify the conservatorship application was given to his attorney, but he failed to notice that his attorney had left this section

blank.

The findings highlight a serious problem in establishing conservatorships. Despite poor documentation in the conservatorship petition, the court, granted the conservatorship. This is an area for future study in requiring functional and mental health assessments for substantiating conservatorships.

In this particular case, the private professional conservator had a contractual relationship with an acute hospital to seek conservatorship orders for persons requiring placement and had no family to intervene. This could potentially pose several conflict questions. For example, will conservators exercise their fiduciary obligations to their wards or will the conservators follow the hospital administrators direction to possibly prematurely discharging the patient to a lower level of care? Another interesting question is whether the hospital released confidential information about the patient without the patients informed release of information. The problem here is that the hospital could violate the patient's right to privacy. Again, further research is needed in this area.

One of the major problems facing the court is determining any ownership interests conservators might have in board and care homes, home health care agencies, real estate franchises, and banking institutions. Loughran, the private professional conservator owns and operates a home health care agency, which

he disclosed to the judge. Earlier in this research project, newspaper reports disclosed there were serious problems where a conservator placed estate monies into financial institutions which the conservator had an ownership interest. Since the court can not check each vendor conservators use, it's almost impossible to monitor potential conflicts. It should be noted that there is no penalty for conservators using a business or service they own. This is further compounded by the absence of licensing provisions which would monitor the professional behavior of conservators. Again this is an area for further study.

Neither the questionnaire nor the case studies addressed the issue of the trust and affection which may develop between conservators and conservatees. This special relationship allows conservators to influence their wards to change estate plans. Conservatees can become dependent upon conservators. In cases where there is no close family members around, conservatees may be extremely grateful for the attention they receive from their conservators and may instead wish to change their wills as the ultimate measure of gratitude. This may be an area where the dependent relationship can be abusive. Again further research is needed to look into this area and perhaps legislation to discourage practices where conservators are included as estate beneficiaries. Recent California legislation has been passed to, at least partially, protect against bequests to attorneys who have a confidential and

personal relationship with testators.

Federal Model Standard 5: Rights of Conservatees

Federal Model Standard 5 covers the rights of a conservatee. The conservatee retains all legal and civil rights guaranteed to residents under the State and United States Constitution. These rights can include the right to be treated with dignity and respect, the right to guardianship services suited to the conservatee's condition and needs, the right to privacy, the right to have personal desires, preferences and opinions given due consideration, the right to petition for termination of the guardianship, and the right to bring a grievance against the program.

The public guardians rated highly on questions dealing with protection of conservatees rights. The public conservators reported that they sought the wishes of conservatees as they related to medical care, placement and funeral plans. Again, public conservators believed that conservatees should be treated with dignity, had rights to privacy, had rights to have personal desires, preferences and opinions given due consideration, and the right to grieve against the program.

When public and private conservators were compared as to the conservatorship applications when seeking independent estate powers, the private conservator only sought independent

powers when he found it necessary to administer the estate. This contrasted with the public conservator who routinely asked for the full range of independent powers. The attorney for the public conservator recommended seeking the full range of independent powers to avoid separate petitions asking for the same authority.

In the comparison between the public and private conservator case files, case documentation was non-existent as to the conservatees preferences. Unless the conservators remembered the conservatees preferences, there is strong evidence to suggest the conservatees preferences and wishes would be ignored.

Federal Model Standard 7: Personal Contact Requirements

Personal contact and ongoing responsibility is the theme of Federal Model Standard 7. Guardians should formulate short- and long-range plans for the conservatee. Guardians of the person should have meaningful visits with their wards no less than once a month. Guardians of the estate shall have meaningful visits with their wards no less than quarterly. A meaningful visit will include communication with the ward, conference with the service provider, examination of any charts or notes, assessment of the appropriateness of maintaining the ward in the current living situation, assessment of the wards physical appearance and psychological

and emotional state, assessment of the living situation, assessment of the adequacy and condition of the ward's personal possessions. The guardians shall keep a written summary of all personal contact with the ward.

The survey indicated that most public conservators visited conservatees once every three months unless there was a need to visit more often. This practice was based upon conservatees living in a licensed placement as opposed to independent living situations. Returning to our actual examples from El Dorado County, a conservatee was visited weekly if placed in independent living. On the average the conservatee was visited once every three months. In the case of the private conservator, conservatees were visited at least once a month and more often if necessary.

The California Probate Code requires the filing of a general plan within three months after appointment. Thus, for California guardians, long-and short-term plans are formulated for the conservatee. The California legislature recently repealed this requirement but some courts continue to require plans under their local rules.

This standard calls for case file documentation of the meaningful visit. In both cases the private and public conservator were able to answer questions regarding the general condition of the conservatee, but case files had no documentation about significant developments or ongoing contacts. The documentation for meaningful visits were

poor or lacking in both the public and private case files. Thus, the public and private conservator failed to met this standard.

Neither long-term or short-term goals were developed for conservatees by public or private conservators. This signifies that more attention needs to be directed on developing conservatorship goals in the personal and financial management.

Federal Model Standard 8: Living Situation

Federal Model Standard 8 outlines the conservator's personal responsibility to monitor the living condition of the conservatee. The conservator should carefully monitor the living situation of the ward. Some of the factors include the conservatee's wishes, quality of life offered by that facility, opportunities for rehabilitation, the physical atmosphere of the placement, treatment of the ward, and opportunity of privacy and exercise of self-determination.

The general public guardian survey reported that public conservators tried to follow the wishes of the conservatee. Neither the survey or the evaluations of the conservators provided any insight into how well the conservatee's living situation is monitored. California law prohibits conservators from placing persons in unlicensed facilities. Thus, California conservators will either maintain conservatees in

their own homes or in licensed facilities otherwise conservators could be subject to criminal prosecutions.

Federal Model Standard 9: Medical Services

Federal Model Standard 9 discusses securing medical services and authorizing medical treatment. The survey indicated that the majority of public guardians sought the conservatee's preferences when making medical decisions. The private conservator expressed a great deal of concern in making medical decisions on behalf of the conservatee. Whenever any important decisions are made, the private conservator made an effort to accompany the conservatee to the medical appointment and discuss the condition with the conservatee to reach a decision. The public conservator spent a great deal of time seeking medical and dental doctors who would treat medical patients. Both conservators were concerned and actively sought medical treatment for their conservatees.

Both public and private conservators sought and obtained exclusive authority to consent to medical treatment on behalf of their conservatees whenever conservatees were disabled. Neither the survey or the conservator case review fully examined the decision-making medical consent process for conservatees. The issue was examined to the extent of what factors public conservators considered when making medical

decisions. The public conservators reported the factors included the wishes of conservatees, advice of physicians, wishes of the families, and to a lesser extent, the quality-of-life, diagnosis, age and the benefits and risks of any proposed medical treatment. Issues related to appropriate treatment for such illnesses as cancer, AIDS, amputation, non-resuscitation and withdrawal of life support require further research to allow the conservator to make informed decisions.

Federal Model Standard 12: Program Requirements for
Conservatorship Agencies

Federal Model Standard 12 establishes program requirements for conservatorship agencies. This would include the requirement to have a sufficient number of staff available to carry out the duties required by statute and standards presented. The professional staff must attend and successfully complete 30 or more hours of orientation training and 8 hours of annual continuing education. The program should be available to provide emergency and on-call services 24 hours, seven days a week. Additionally, the program should have a grievance procedure where conservatees or interested parties would have a way to complain about the program and the program should have a system of file and case management which allows easy and quick access to available client information. The case file should include a uniform system for filing court

pleadings, client plans, reports to the court, record of client contacts, correspondence, financial and medical records. Finally, the program shall provide for an annual fiscal review of both program and client accounts.

The public guardian survey asked respondents if they believed their programs had adequate staffing to meet their responsibilities. Seventy-five percent of the respondents indicated they did not have adequate staffing. However, the respondents (74%) did report their programs were available on a 24- hour basis.

Internal financial audits occur rarely according to the survey. If there were any financial audits, the county auditor conducted the review (24%) as opposed to using an outside independent auditor (4%). Clearly, there is a weakness in complying with the Federal Model Standards.

The public and private conservator evaluation disclosed that both conservators were available 24 hours a day, seven days a week which complies with the Federal Model Standard.

The condition of the case files deserves some attention. In the case of the public conservator, the case files were well organized making it easy to access client information. The private conservator maintained his case records in 3 ring binders making it difficult to access client information.

In the event the conservator was instantly killed or suffered a serious illness, the small agency or sole practitioner would be in serious trouble since there would be

no one available to provide care for the conservatees.

These findings again suggest the need for close judicial monitoring so that in the event a conservator becomes incapacitated, another conservator can be appointed.

Federal Model Standard 13: Fees

The next Federal Model Standard discusses fees. The standard suggests that any program serving as a guardian may charge reasonable fees to help defray the cost of services. If, however, the program already receives money from another source, fees may not be charged against the conservatee. Fees charged may not be paid from the personal allowances permitted under certain public benefits programs. The fee must take into account the ability of clients to pay, and in no event may fees be taken from clients with an annual incomes at or below the current federal poverty level. Absent the rendition of extraordinary services, fees shall not exceed 5% of all the conservatee's income.

The public guardian survey and the examination of the actual practice of a public and private conservator briefly touch upon the question of compensation. This is one area where the conservator is in an adverse position to the conservatee. According to the public guardian survey, the majority of public guardians had policies and procedures on the collection of fees. All public guardians receive some type

of county funding. As the years pass, less and less county funding will be available for public guardian programs, requiring the programs themselves to increase fees to defray the cost of program operations.

The public conservator reported an hourly fee of \$15.00 for services. Presumably, this amount represents reimbursement for providing services, since government is not allowed to realize a profit. The problem that may arise is that as long as a person needs services, the public agency will endeavor to provide the service thereby increasing the workload regardless of compensation. California law permits a judge to order a case into the hands of a public guardian, thus, the public conservator cannot choose cases.

Private conservators are able to select their cases and charge conservatees the full cost of services. In our example, the private conservator charged \$60.00 an hour. He purchased bookkeeping services at a modest cost of \$25.00 a month. In the files that were reviewed, this conservator sought reasonable compensation for his services, often not charging the conservatee for each service rendered. The private conservator's challenge is to serve enough clients to support himself. The inherent problem is that any conservator could provide unnecessary services to the wealthier clients to subsidize the less affluent conservatee. The question then becomes, as the assets diminish, is there a relationship between the services rendered and the value of the

conservatorship estate?

Earlier in this research project, the private conservator indicated that he spends, on the average, at least 78 hours a year providing services to the conservatorship estates. Assuming this is correct, if the estate was charged \$60.00 an hour for 78 hours the fee would be \$4,680.00 each year. This would not include any attorney charges. This suggests that the Federal Model Standard recommendation that fees not exceed 5% of the conservatee's income is not followed and may not be realistic. The question of fees should be further researched.

The overall conclusion is that a conservatee must have sufficient assets for a private conservator to be interested in handling the case or the agency must have sufficient funding from other sources to pay for services for the poorer conservatee. The public sector, faced with diminishing resources, may not have the ability to serve poor conservatees, unless there is public support to adequately fund public conservatorship agencies. As the population ages, conservatorship agencies simply will not be able to meet future demands.

Federal Model Standard 14: Review of Cases

Federal Model Standard 14 introduces the concept of an internal and external review. The internal review would be conducted at least once a month and includes a sampling of the

program's caseload. Each case handled by the program shall be reviewed no less than once every 6 months. The outside review would consist of a committee of objective third parties who would review a sampling of the program's cases.

The public conservator survey reported that the majority of respondents did not have a systematic review of the cases. When the respondent indicated an internal review occurred it was the result of a supervisor reviewing the case, the annual court review, a review by the division chief and the property planning unit, and quality assurance form.

When an outside review occurred it was the result of the superior court investigator, grand jury, county auditor, State Department of Mental Health, independent auditor, conservatorship advisory committee, patients rights advocate, department of social services or the family member of the conservatee. About half of the public guardian respondents indicated there was an outside review.

It would appear from the survey results that internal and outside reviews were not consistently carried out. The private and public conservator evaluation did not examine either the occurrence or frequency of outside review. The absence of internal and external review is an inherent weakness for conservators.

The Federal Model Standards suggest third-party review the program's case files. In view of the technical work it is highly unlikely that an objective third party would recognize

any problems. Professional organizations could provide peer reviews which would comply with this standard.

Summary

The second goal of this research project was to identify certain key Federal Model Standards and to examine how the public and private sector complied to these standards in actual practice. The Federal Model Standards were introduced to Congress in 1989. It appears the Standards clearly point out the actual practices of public conservators and to some extent private conservators. The Standards suggest a periodic review of cases by an internal and outside review process and an overall program reviews. The data presented in this research project prove that the quality control mechanism appears to be weak or non-existent in both the public and private sector.

While this study did not provide an in-depth examination of the financial management of conservatorship programs, it appears additional research should be done in this area. The Federal Standards provided general guidelines about decision-making in the disposition of personal property which is workable in smaller conservatorship agencies but might pose larger problems in large conservatorship agencies. For example, if a program is managing properties in excess of \$2 million aggregate, the program manager must be knowledgeable

about managing and investing large amounts of money, handling large commercial accounts and setting up internal controls to limit access to cash and personal property.

The Effectiveness of Judicial Monitoring

The final goal of this research project was to examine the effectiveness of judicial monitoring. Earlier in this research paper a six-state study on judicial monitoring was introduced. This study recommended the adoption of an eight-element model designed to improve judicial monitoring. The eight elements included the availability of educational materials, requiring conservators to complete general plans, a court review of the file to check completeness and accuracy four months after the appointment, compliance with the court's requirements on personal reports and accounts, the timely filing of personal and account reports, a check and audit of the personal report and account, a court hearing to review the required report and feedback given to the conservator on the personal reports and account.

In California, conservators are required to file a conservatorship application specifying the justification for the conservatorship of the person and estate. At the time of appointment the conservator is to receive a conservatorship handbook outlining duties and responsibilities for the conservator. Within three months after the conservatorship

application is granted the conservator is required to file a general plan, and inventory and appraisal. At the end of the year the conservator is also required to file a court accounting. The California court system has at least seven elements of the model. The only section missing is feedback to the conservator unless the approval of the general plan and accounting amounts to feedback.

Having these elements in place, the basic questions to ask about court monitoring is: is the present system working now? If not, why not, and what can be done to make it work better? The public guardian survey, as well as the examination of the public and private conservators, provided insights to these questions.

Is the current system of monitoring conservators working well? No, according to the perception of the majority of public guardian respondents. Along this same line, public conservators believe that the public sector is held to a higher standard of care than private conservators and judges do not penalize private conservators when errors occur.

The examination into the public and private conservator illustrated that when the public conservator was delinquent in preparing his annual accounting the El Dorado Superior Court did not issue any orders forcing the conservator to file the accounting.

Why is the current system not working well? Some public guardian respondents provided insight. There are at least

three reasons. First, there is insufficient funding to complete accounting reviews, visits and review the needs of the ward. The second reason is that court investigative personnel are not knowledgeable about conservators' responsibilities and sometimes judges are not objective, overlooking sanctionable errors and not questioning large fees. Finally, the court is not able to see all the problems brought out in a complaint such as unpaid bills, overdrawing accounts, and receiving kickbacks.

Some of the findings are identical to the conclusions reached in a National Model for Judicial Review of Guardians' Performance where more funding is needed to hire personnel if effective judicial monitoring is to take place.

Finally, what can be done to improve judicial monitoring of conservators? It would appear that some judicial guidelines or educational programs need to be developed to improve overall monitoring. Some judges have expertise in this area and could provide excellent training for less experienced jurists. Along these same lines, since judges must ultimately decide on the value and compensation for conservators, perhaps regional or statewide guidelines could be established to determine what rate should be allowed conservators.

The second element which would improve the ability of courts to monitor conservators is to allow judges the option of ordering accounting firms to conduct financial audits. A financial audit could examine that generally accepted

accounting principles are followed. An audit could possibility disclose problems of unpaid bills, unacceptable contracting practices especially if conservators favor using one particular vendor as opposed to bidding work. It would also be noted that a financial audit may not disclose problems such as conservators receiving financial kickbacks. The results of the audits would be given to the judges who could use their authority to penalize or remove conservators. The costs of such audits could be paid by the courts. This would require a filing fee increase or access to the State Mandates Fund.

Summary

The third goal of this research project was to examine the effectiveness of judicial monitoring. The limitation of this study is that court personnel were not asked about their perception of judicial monitoring. The number of actual cases reviewed for both the private and public conservator, while it represented 10% of the caseloads respectively, is not sufficient to indicate a severe problem. Rather, the perception of most public guardians is that judicial monitoring is not sufficient. This problem can be addressed in two ways. First, educate jurists, perhaps adding and training more court personnel. Second, allow judges to order financial auditors to review the records of both public and private conservatorship agencies.

Appendix I

Conservatorship Questionnaire

1. Does your office provide any training for the conservator relating to the fiduciary duty of the conservator to act with honesty and good faith to the conservatee? Y__N__
If yes, please explain_____
2. Once the conservatorship order is granted, does the conservator seek opinions/wishes, from the conservatee, if able, relating to the following:
 - a. wishes on medical care Y__N__
 - b. wishes on placement Y__N__
 - c. wishes on funeral arrangements Y__N__
3. Does your office have written policies as to who is eligible for conservatorship services? Y__N__
4. Circle the statement which best describes your philosophy in caring for your conservatee:
 - a. The purpose of the conservatorship is to promote self-determination, independence and self-reliance.
 - b. The purpose of the conservatorship is to maintain the conservatee in a safe environment.
 - c. The purpose of the conservatorship is to monitor the ongoing care and treatment of the incapacitated individual.
5. Please describe the methods used by your office to train your deputy public guardian staff?_____
6. Does your office have a policy on fee collection? Y__N__
If yes, what is the policy for individuals who lack the ability to pay for services?

For individuals unable to pay the full cost of services are they given the same services? Y__N__
7. How often does the deputy public guardian visit his/her conservatee?_____
8. How does the deputy public guardian determine the appropriate housing for the conservatee? Please circle one.

- a. medical evaluation performed by physician.
 - b. assessment performed by licensed professional staff (i.e. registered nurse, licensed clinical social worker.)
 - c. assessment completed by deputy public guardian.
- 9. Does your office have written policies/guidelines regarding payment of bills for the conservatee? Y__N__ If yes, please describe the areas the policy covers.
- 10. Please circle what rights the conservatee should retain under conservatorship. (May circle more than one.)
 - a. the right to be treated with dignity and respect.
 - b. the right to privacy.
 - c. the right to have personal desires, preferences, and opinions given due consideration.
 - d. the right to grieve against the program.
- 11. What factors does your staff consider when making medical decisions on behalf of the conservatee? _____
- 12. Does your office have written policies regarding handling real and personal property belonging to conservatees? Y__N__
- 13. When making decisions on selling the principle residence of the conservatee what factors do you consider? _____
- 14. Do you believe your program has sufficient staffing to carry out its statutory duties? Y__N__
- 15. Is your program available 24 hours a day? Y__N__
- 16. Does your program have a systematic review of all the conservatorship cases? Y__N__ If yes, please explain the review process. _____
- 17. Is your program subject to an outside review? (This excludes the court review.) Y__N__ Who conducts the review? _____
- 18. Has your office had any contact with private conservators? Y__N__
- 19. Have you or someone else in your office encountered

problems with private conservators? Y__N__ If yes,
please describe the type of problems you've
encountered?_____

20. Do you think the Court is adequately monitoring the
performance of private conservators? Y__N__ If no,
please explain_____
21. To the best of your knowledge, does the judge overseeing
conservatorships penalize private conservators? Y__N__
If yes, please explain_____
22. Does your court hold the public conservator to a higher
standard than the private conservators? Y__N__ If yes,
please explain_____
23. What is the average fee for the private conservator in
your jurisdiction? Hourly_____ Yearly_____
24. Do you believe private conservators offer better, more
personalized service than public conservators? Y__N__
Please explain_____
25. Do the private conservators in your area offer other
fiduciary services? If so what are they:_____
26. Do you think that public conservators are more ethical
than private conservators? Y__N__ About the same_____
27. Information about your program.

Total number of probate cases_____

Total number of LPS cases_____

Total program staffing_____

Your current title_____County_____

Appendix II

Questionnaire Results

1. Does your office provide any training for the conservator relating to the fiduciary duty of the conservator to act with honesty and good faith to the conservatee?

Yes: 39% No: 61% (N = 54)

Comments: (N = 23)

Yes. The department provides formal training through orientation and basic training. (26%)

Individual training conducted by a supervisor to deputy conservators. (22%)

Training provide by Public Administrator/Guardian Association. (9%)

Knowledge acquired by reviewing the appropriate Probate Codes. (13%)

Require staff to sign conflicts of interest statement. (4%)

No. The department offers no formal training. (13%)

2. Once the conservatorship order is granted, does the conservator seek opinions/wishes, from the conservatee, if able, relating to the following. (N=57)

a. wishes on medical care. Yes: 96% No: 4%

b. wishes on placement. Yes: 98% No: 2%

c. wishes on funeral arrangements. Yes: 98% No: 0

3. Does your office have written policies as to who is eligible for conservatorship services. (N=57)

Yes: 40% No: 60%

4. Circle the statement which best describes your philosophy in caring for your conservatee:

Comments: (N=65)

a. The purpose of the conservatorship is to promote self determination, independence and self-reliance. (29%)

b. The purpose of the conservatorship is to maintain the conservatee in a safe environment. (32%)

- c. The purpose of the conservatorship is to monitor the ongoing care and treatment of the incapacitated individual. (38%)

5. Please describe the methods used by your office to train deputy public guardians: (N=52)

Responses:

- a. On the job training from the supervisor to the trainee. (42%)
- b. Written policies and procedures. (10%)
- c. Training provided at Public Administrator/Guardian Training. (23%)
- d. Formal training or orientation. (19%)
- e. Learn by Doing. (6%)

6. Does your office have a policy on fee collection? (N=57)

Yes 93% No 7%

Comments: (N=47)

- a. Fee amount is granted by the court but collection is deferred until conservatorship is terminated. (40%)
- b. Fee amount is granted by court but is not collected until it is no longer a hardship. (6%)
- c. Fees are deferred when the estate is less than \$2,000. (9%)
- d. Fees are not requested when the estate can not afford to pay fees. (32%)
- e. Fee requests generally request a percentage of cash, if amount is low \$600. will waive fees. (4%)
- f. Clients needs come first then our fees. (4%)
- g. Fees are requested based upon the client's ability to pay. (4%)

For individuals unable to pay the full cost of services are they given the same services? Yes 100% No 0

(N=56)

7. How often does the deputy public guardian visit his/her conservatee? (N=57)

- a. Visits are conducted at least once a quarter.
(53%)
- b. Visits are conducted quarterly and more often when needed. (16%)
- c. Visits are conducted once a month on new appointments then conducted quarterly. (7%)
- d. Visits are conducted on a monthly basis. (7%)
- e. Visits are conducted when based upon living arrangements. Clients living independently are visited monthly, and clients living in institutions once every three months. (5%)
- f. Visits are conducted only when necessary.
(9%)
- g. Visits are conducted once every 6 months.
(4%)

8. How does the Deputy Public Guardian determine the appropriate housing for the conservatee? Please circle one. (N=86, Respondents circled more than one answer.)

a. Medical evaluation performed by physician. (26%)

b. Assessment performed by licensed professional staff (ie. registered nurse, licensed clinical social worker.) (28%)

c. Assessment completed by Deputy Public Guardians. (47%)

9. Does your office have written policies/guidelines regarding payment of bills for the conservatee? Yes 35% No 65% . If yes please describe the areas the policy covers. (N=57)

Comments: (N=15)

a. The policy indicates what bills are appropriate to pay. (53%)

b. The policy indicates how much in savings one should maintain and processing medical bills. (13%)

c. Basic accounting procedure such as having a bill before it is paid, payment authorization, when

court authorization is needed. (27%)

- d. Require all bills are paid within three working days. (7%)

10. Please circle what rights the conservatee should retain under conservatorship. (May circle more than one.)
(N=57)

- a. The right to be treated with dignity. (96%)
- b. The right to privacy. (91%)
- c. The right to have personal desires, preferences, and opinions given due consideration. (100%)
- d. The right to grieve against the program. (98%)

11. What factors does your staff consider when making medical decisions on behalf of the conservatee? (N=51)

- a. The wishes of the conservatee, advice of the physician, wishes of the family. (41%)
- b. The best interests of the conservatee, quality of life, diagnosis, age and the benefits and risks. (22%)

- c. Medical assessment by professional staff. (10%)
- d. Evaluating the benefits against the risks. (8%)
- e. The ability of the conservatee to care for himself/herself. (4%)
- f. Pain, standard of living and ability to rehabilitate. (2%)
- g. The medical decisions are made by the public guardian. (4%)
- h. The client can give informed consent to medical treatment, if treatment is necessary, and if payment or insurance is provided. (4%)
- i. The mental health conservator does not made medical decisions.(2%)
- j. Mental status evaluation. (2%)
- k. Varies with the individual. (2%)

12. Does your office have written policies regarding handling

real and personal property belonging to conservatees?

Yes 64% No 36% (N=55)

13. When making decisions on selling the principal residence of the conservatee what factors do you consider? (N=51)

- a. There is no likelihood the client is able to return home, the impact of home ownership on benefits eligibility and the need to convert home resources to liquid assets. (45%)
- b. The conservatee's wishes, the client's needs, and the ability of the conservatee to return home. (22%)
- c. The financial needs of the client. (22%)
- d. Financial needs of the estate, client's desires and tax consideration. (2%).
- e. Risk to the estate. (2%)
- f. Client is able to stay home. (2%)
- g. The Public Guardian does not handle estates. (4%)

h. Care is necessary. (2%)

14. Do you believe your program has sufficient staffing to carry out its statutory duties. Yes 27% No 73%
(N=56)

15. Is your program available 24 hours a day? Yes 74% No 26% (N=54)

16. Does your program have a systematic review of all the conservatorship cases? Yes 42% No 58% If yes, please explain the review process. (N=57)

Comments: (N=19)

a. Supervisor reviews cases at the time of the employee evaluation. (26%)

b. Annual court review. This includes court accounting and investigation reports completed by the Superior Court Investigator. (42%)

c. Reviewed by division chief and property planning meeting. (5%)

d. Internal audit completed on random cases. (5%)

e. Cases are reviewed at least once a month. (5%)

f. Annual review by case manager on mental health cases. (11%)

g. Quality assurance form. (5%)

17. Is your program subject to an outside review? (This excludes the court review.) Yes 49% No 51% Who conducts the review? (N=57)

Comments: (N=25)

a. Superior Court investigator (20%)

b. Grand Jury (28%)

c. County Auditors (24%)

d. State Department of Mental Health. (8%)

e. Independent Auditor. (4%)

f. Conservatorship Advisory Committee. (4%)

g. Patients Rights Advocate. (4%)

h. Department of Social Services. (4%)

i. Family of Conservatee. (4%)

18. Has your office had any contact with a private conservator? Yes 68% No 32% (N=57)

19. Have you or someone else in your office encountered problems with private conservators? Yes 53% No 47% If yes, please describe the type of problems you've encountered. (N=55)

Comments: (N=21)

a. Conservator does not understand responsibilities, actual fraud or undue influence. (19%)

b. Conservator is not accountable, fees are excessive and provide a poor service. (14%)

c. Conservator creates fraud. (19%)

d. Family members who are conservators are not well intentioned, mishandle funds, and provide poor care. (10%)

e. Conservator was not informed or knowledgeable about conservatorship responsibilities. (10%)

- f. Conservator was unable to perform duties. (10%)
 - g. Conservator became disabled or predeceased the conservatee. (5%)
 - h. When money runs out, the conservator is quick to dump the case. (5%)
 - i. Private conservators provide fewer services and use Public Guardians for information and resources. (5%)
 - j. No bonds, stolen assets, and poor care. (5%)
20. Do you think the court is adequately monitoring the performance of private conservators? Yes 26% No 57%
Don't know 17%
- Comments: (N=15)
- a. The court is not objective, overlooks sanctionable errors and doesn't question large fees. (27%)
 - b. The court doesn't monitor the accounting, its not unusual to find accounting years overdue. (20%)
 - c. Public guardians are carefully scrutinized by the court. (13%)

- d. The court is not able to see all the problems brought out in a complaint such as unpaid bills, overdrawing accounts, receiving kickbacks. (13%)
 - e. Court investigators not that knowledgeable on conservator's responsibilities. (7%)
 - f. Review once a year is not sufficient. (7%)
 - g. There is no training or licensing of conservators and the court doesn't investigate conservators. (7%)
 - h. Not enough money to do accounting, visits and review needs of the ward. (7%)
21. To the best of your knowledge, does the judge overseeing conservatorships penalized private conservators when errors occur? Yes 25% No 51% Unknown 25% If yes, please explain. (N=53)
- Comments: (N=7)
- Yes.
- a. Private conservator was jailed. (14%)
 - b. Private conservator had his fees reduced, suspension of powers, contempt charges. (14%)

- c. One conservator recently sanctioned by the court. (14%)

No.

- a. The court did not surcharge for errors, fails to penalize for failure to complete accounting but approves high fees. (43%)
- b. Often cases referred to public guardian, so we get penalized. (14%)

22. Does your court hold the public conservator to a higher standard than the private conservators? Yes 53% No 37% Unknown 9% If yes, please explain. (N=54)

Comments: (N=12)

- a. The court holds Public Guardians as professionals and private conservator not held to the same standard. (17%)
- b. The court requires us to do more reports than private conservators and was even receptive to surcharging the Public Guardian for heavy debt occurred before appointment. (17%)
- c. Court investigator tries to get private conservators appointed because she feels more

personalized service is given. (17%)

d. The court expects more of the Public Guardian, wants to grant less fees and is more tolerant of private conservators if they are private attorneys. (8%)

e. Court overloaded, they don't want us. (8%)

f. The court expects strict adherence to codes and use of prudent judgement. (8%)

g. Court has developed bids against Public Guardian. (8%)

h. Public agencies have resources not available to private agencies. (8%)

23. What are the average fees for the private conservator in your jurisdiction? Hourly? Monthly? (N=49)

\$50 to \$65 per hour (4%)

\$50 to \$75 (2%)

\$50 to \$90 (2%)

\$55. (2%)

\$60. (2%)

\$65 to \$150 (2%)

\$75 or 1% of estate (2%)

\$80 (2%)

\$90 (2%)

\$125 (2%)

\$40 for social workers, \$120 for lawyers, (2%)

\$300 to \$500 per month (2%)

\$500 to \$5,000 per year. (2%)

Unknown 72%

24. Do you believe private conservators offer better, more personalized service than public conservators? Yes 28%

No 52% Unknown 20% (N=50)

Comments: (N=21)

a. Private conservators see clients more often because caseload is lower. (43%)

b. Caseloads are lower, demands lower and conservatee has more money. (14%)

c. Private conservators seem to have no interest when money runs out. (10%)

- d. Paying for each service doesn't mean its better.
(5%)
- e. Private conservators can do a better job if they know what they are doing because counties are overloaded. (5%)
- f. Depends upon motive and relationship. (5%)
- g. Seen as legal work, social work type aspects are less prioritized by private counsel. (5%)
- h. More money in fees. (5%)
- i. The public thinks that private conservators are wonderful, public are not. (5%)
- j. Private conservators only take cases where they can be financially compensated and buy services they need. They will not take difficult cases having no money. (5%)

25. Do the private conservators in you area offer other fiduciary services? If so what are they? Unknown 69%
 Yes 20% No 11% (N=45)
 Comments: (N=11)

- a. Representative payee services. 45%
- b. Trusts 18%
- c. Power of Attorney's 18%
- d. Personal representative (decedent estates) 9%
- e. Nursing care management. 9%

26. Do you think that public conservators are more ethical than private conservators? Yes 49% No 11% Same 32% Unknown 8%. (N=53)

27. Information about your program (N=57)

<u>County</u>	<u>Title</u>	<u>Staff</u>	<u>LPS</u>	<u>Pro.</u>
Contra Costa	Prog. Mgr	23	360	120
Colusa	DPG	1	6	14
Colusa	DPG		6	24
El Dorado	Asst PG	4	54	80
Humbolt	PG	9	140	350
Kern	Div.Chief	15	200	100
Kings	PG	5	85	150
Lassen	PG	2	18	40
Los Angeles	Dep.Dir.	62	2,500	1,000
Madera	PA/PG	3	56	130
Marin	DPG	3		180
Marin	DPG	3		180

<u>County</u>	<u>Title</u>	<u>Staff</u>	<u>LPS</u>	<u>Pro.</u>
Mendocino	DPG	3	45	38
Merced	PA	5	92	186
Napa	Ass PG	2	8	50
Orange	CDPG	66	920	200
Placer	PG Sup	2.75	95	85
Riverside	SDPG	31	320	250
Sacramento	DPG			
Sacramento	SDPG	26	400	400
Sacramento	CDPG	26	560	480
Sacramento	DPG			
Sacramento	DPG	26	400	400
Sacramento	DPG			
Sacramento	DPG			
Sacramento	SDPG			
Sacramento	DPG			
San Diego	Prog.Dir	36	1800	
San Francisco	Sr.Est. In	11		300
San Francisco	Serv.Train.Sp	20	370	350
San Francisco	Asst PG	3		300
San Francisco	PG	10		250
San Francisco	Sr.Est Inv	10		250
San Mateo	CDPG	19	400	350
San Mateo	SDPG	25	350	350
San Mateo	DPG	14	400	350
San Mateo	PG	15	400	350

<u>County</u>	<u>Title</u>	<u>Staff</u>	<u>LPS</u>	<u>Pro</u>
Santa Clara	PA/PG	90	875	580
Santa Clara	Est. Inv	95		
Santa Clara	E.A			
Santa Clara	DPG		880	540
Santa Clara	Manager/Es	90	750	600
Santa Cruz	DPG	13		
Santa Cruz	Sr.DPG	14	200	200
Shasta	CDPG	5	60	75
Siskiyou	Ass PA/PG	1.5	20	15
Solano	Int. PG	8		
Sonoma	Sr. PA/PG	1.3		50
Stanislaus	PG	16	65	195
Tehema	PG	2.5	45	75
Tulare	PG	5	140	75
Tuolumne	PG	3	27	11
Yolo	PG	10	85	120
Unknown (4)				

Appendix III

EL DORADO PUBLIC GUARDIAN: CLIENT CARE

Total number of probate cases reviewed. 7

1. Establishment of the Conservatorship.

Assessment of the Client

Functional assessment Y 1 N 6

Examination into alternatives

Representative Payee Services Y___ N 7

Power of Attorney Y___ N 7

Order of Preference

Family Members Interviewed about being
the conservator. Unable to
determine

One of the cases reviewed indicated the
appointment occurred because of conflicts
within the family.

Nominations from Family members secured.
(New appointments within the last 6 mos) Y___ N 2

Evidence of need to establish conservatorship
of Person. Y 2 N 4

Medical declarations completed regarding the
proposed clients ability to make informed medical
decisions. Y 1 N___

Medical declarations regarding inability to
attend court hearing filed with the court or
the client is taken to court. Y___ N 1

The medical declaration was not filed since
the client was able to make an appearance in
court.

2. General Plan Filed on a Timely Basis

of cases reviewed 3 # on Time 0 # Late 3

3. Client is assessed for placement. Unknown

Assessment completed by mental health professional Y_N__

Assessment completed by Public Guardian Y_N__

4. Court is notified whenever client is moved.

Court notified 0 Court not notified 7

5. Client is provided clothing at least once a year.

Number of client receiving clothing 1

6. Personal needs provided on a monthly basis.

Number of cases where PN sent monthly 2

7. Policy or practice regarding visits with clients.

The public guardian has no written visitation policy; however the practice is to schedule visits according to the type of living arrangement. Persons placed at skilled nursing facilities or board and care facilities are visited quarterly. Persons who reside in an independent living arrangement are visited weekly; but most of these clients are seen daily.

8. Provisions for medical and dental care.

The Public Guardian indicated he makes a strong effort to ensure his clients receive medical and dental care. Obtaining care for medi-cal patients is difficult since many medical providers are reluctant to accept medi-cal patients.

When possible what efforts were made to determine the preferences of the client regarding medical decisions and/or funeral arrangements.

The Public Guardian indicated that he attempts to determine the preferences of his clients regarding medical decisions or funeral arrangements. If the

client is unable to provide this information, he seeks the advise of family members.

10. Policy or practice prohibiting clients from being placed in a Mental Health facility, consenting to experimental drugs.

The Public Guardian and his assistant are aware of the prohibitions in placing clients in Mental Health facilities and consenting to experimental drugs. The Public Guardian indicated the deputies are trained on a one-to-one method. During training this information is given to the deputies.

Appendix IV

TERENCE LOUGHRAN: CLIENT CARE

Total number of probate cases reviewed. 3

1. Establishment of the Conservatorship.

Assessment of the Client

Functional assessment Y 0 N 3

Examination into alternatives

Representative Payee Services Y 3 N 0

Power of Attorney Y 3 N 0

Order of Preference

Family Members Interviewed about being
the conservator. Y 2 N 0

Nominations from Family members secured.

(New appointments within the last 6 mos) Y 2 N 0

Evidence of need to establish conservatorship

of Person. Y 1 N 2

Two petitions for appointment did not include justification establishing the necessity of the conservatorship. The conservator reported this information had been given to his attorney, however, the attorney did not include this in the petition. The conservatee's nomination was attached to the conservatorship application.

Medical declarations completed regarding the
proposed clients' ability to make informed medical
decisions. Y 3 N 0

Medical declarations regarding inability to
attend court hearing filed with the court or
the client is taken to court. Y 3 N 0

2. General Plan Filed on a Timely Basis

Number of cases filed on Time 2 Number filed late 1

3. Client is assessed for placement. Yes

The conservator indicated that a physician is always consulted regarding placement. Placement to a more restrictive placement is only made upon recommendation from the treating doctor.

Assessment completed by mental health professional Y 0 N 0

Assessment completed by conservator Y 0 N 0

4. Court is notified whenever client is moved.

Court notified 1 Court not notified 1

5. Client is provided clothing at least once a year.

Number of cases where clothing purchased 1

6. Personal needs provided on a monthly basis.

Number of cases where PN sent monthly 3

7. Policy or practice regarding visits with clients.

The conservator reported that visitation occurred once a month. Visits could occur more often depending upon needs. The goal is to provide more personalized services but only see the clients when he believes he can be helpful.

8. Provisions for medical and dental care.

The conservator reported that he works with the conservatee's existing doctor. If the patient has a health maintenance organization he works within that framework. Dental coverage is sought through medi-cal whenever possible for any indigent client.

When possible what efforts were made to determine the preferences of the client regarding medical decisions and/or funeral arrangements.

The conservator always consults with patients regarding their preferences. Whenever important medical decisions are made he is present at the medical consultation with his conservatee. This ensures the conservator is aware of the situation and the conservator has input. In regards to funeral arrangements, the conservator, reported that he always asked his clients their wishes.

10. Policy or practice prohibiting clients from being placed in a Mental Health facility, consenting to experimental drugs.

The conservator was aware of the prohibitions regarding placing clients in mental health treatment facilities or consenting to experimental drugs.

Appendix V

EL DORADO PUBLIC GUARDIAN: LEGAL REQUIREMENTS ON CONSERVATORSHIP ADMINISTRATION

1. General plan (Probate Cases Only operative after July 1, 1991)
Number of cases reviewed: 3
Number of cases where general plan filed on time 0
Number of cases where general plan filed late. 3
Number of times court ordered general plan filed. 0
2. Inventory and Appraisal (LPS and Probate Cases)
Number of cases reviewed: 11

Number of cases where conservator requested an extension of time to file an Inventory and Appraisal 0

Number of cases the Inventory filed on Time. 0

Number of cases the Inventory filed Late. 10
(Successor conservatorship did not require I & A)
3. Court Account (LPS and Probate)

Number of cases reviewed: 11

Number of cases where the conservator requested an extension to file the Court Account. 0

Number of cases the Court Account is filed on time. 0

Number of cases the Court Account is filed late. 5
(The accounting were not due on the remaining 6 cases.)
Number of cases where the issued an OSC. 0
4. Accounts upon Termination.
Final accounts filed within reasonable time Y 1 N
Policy on handling cases upon termination. The Public Guardian indicated that each case is evaluated. If the case is an LPS conservatorship, the goal is to make the client as comfortable and liquid before the accounting is filed such as paying rent etc. On cases where the client has died, the goal is to settle the estate, if possible, or in the case where there is an executor, turn over the assets to the executor.

of Terminated Cases Reviewed. 2 (The final account
had not been requested on the second account.)

Final account filed? 6 mos 1 12 mos__ 18 mos_ 24 mos_

Receipt for Assets Filed Y__ N 2

Affidavit of Final Discharge Filed Y__ N 2

Appendix VI

TERENCE LOUGHRAN: LEGAL REQUIREMENTS ON CONSERVATORSHIP ADMINISTRATION

1. General plan (Probate Cases Only operative after July 1, 1991)
Number of cases reviewed: 3
Number of cases where general plan filed on time 2
Number of cases where general plan filed late. 1
Number of times court ordered general plan filed. 0
2. Inventory and Appraisal
Number of cases reviewed: 3

Number of cases where conservator requested an extension of time to file an Inventory and Appraisal 0

Number of cases the Inventory filed on Time. 2

Number of cases the Inventory filed Late. 1
3. Court Account

Number of cases reviewed: 3

Number of cases where the conservator requested an extension to file the Court Account. 0

Number of cases the Court Account is filed on time. 1
Accounting's were not due in the remaining two cases.

Number of cases the Court Account is filed late. 0

Number of cases where the issued an OSC. 0
4. Accounts upon Termination.

Final accounts filed within reasonable time.

All the conservatorship cases were current. The conservator does not have any terminated cases.

Policy on Handling Cases upon termination.

The conservator indicated when a conservatorship terminates he will comply with local court rules requiring a final accounting and distributions to the heirs at law.

of Terminated Cases Reviewed. 0

Final account filed? 6 mos 0 12 mos__ 18 mos_ 24 mos_

Receipt for Assets Filed 0

Affidavit of Final Discharge Filed N/A_

Appendix VII

EL DORADO PUBLIC GUARDIAN: COMPENSATION

1. Policy or practice in collecting fees.

On the probate cases, the public guardian tracks the number of hours where services were performed on a particular case and requests fees on those amounts.

2. Court orders obtained before fees collected Y ☒ N__
3. Periodic fees obtained on larger estates. Y__ N ☒
4. Fees approved set by the Board of Supervisors Y ☒ N__
5. How are fees computed on those estates of insufficient size to pay the full fees. (Cost of reimbursement.)

The Public Guardian will ask for a small fee for services and will defer fees until the final accounting.

Appendix VIII

TERENCE LOUGHRAN: COMPENSATION

1. Policy or practice in collecting fees.

The conservator keeps time records of his time spent on managing each case. Not all hours spent on the case are billed. The conservator petitions for his fees and receives court authorization before he is compensated.

2. Court orders obtained before fees collected Y ☒ N ☐

3. Periodic fees obtained on larger estates. Y ☐ N ☒

4. Rationale as to how the rate is set.

The conservator reported that his rate is set by the customary rate set by other private professional conservator's. The court allows a rate of \$60.00 per hour.

5. How are fees computed on those estates of insufficient size to pay the full fees.

The conservator indicated that he reduces or waived his fees when the estate is unable to pay the fee.

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